No. 98-406-ATX Title: George Price, et al., Appellants

Bossier Parish School Board

Docketed: September 4, 1998

Court: United States District Court

for the District of Columbia

Vide:

98-405

Entry Date

	70-41	15		
r	, 1	Date	2	Proceedings and Orders
-				
	Sep	4	1998	Statement as to jurisdiction filed. (Response due December 14, 1998)
	Oct	21	1998	DISTRIBUTED. November 6, 1998
			1998	Response requested. (Due November 27, 1998 - NONE RECEIVED)
	Nov	6	1998	Order extending time to file response to jurisdictional statement until December 14, 1998.
	Dec	14	1998	Motion of appellee Bossier Parish School Board to dismiss or affirm filed. VIDED.
	Dec	29	1998	Reply brief of appellant George Price, et al. filed. VIDED.
			1998	REDISTRIBUTED. January 15, 1999
			1999	REDISTRIBUTED. January 22, 1999
		1000	1999	PROBABLE JURISDICTION NOTED. The case is consolidated
				with No. 98-405, Reno v. Bossier Parish School Board,
				and a total of one hour is allotted for oral argument.
				The brief of the appellants is to be filed with the
				Clerk and served upon opposing counsel on or before 3
				n.m. Friday, March 5, 1999. The brief of appellees is
				to be filed with the Clerk and served upon opposing
				counsel on or before 3 p.m., Friday, April 2, 1999. A
				reply brief, if any, is to be filed with the Clerk and
				served upon opposing counsel on or before 3 p.m.,
				Friday, April 16, 1999. Rule 29.2 does not apply.
				SET FOR ARGUMENT April 26, 1999.
				***********************
	Mar	5	1999	Joint appendix filed. VIDED.
	Mar	5	1999	Joint appendix in three volumes.
	Mar	5	1999	Brief of appellants George Price, et al. filed. VIDED.
	Mar	5	1999	Brief of the Federal Appellant filed. VIDED.
	Mar	12	1999	CIRCULATED.
	Mar	12	1999	Motion of Solicitor General for divided argument filed.
			1999	Motion of Solicitor General for divided argument
	Apr	2	1999	Brief of appellee Bossier Parish School Board filed. VIDED.
	Apr	8	1999	Record filed.
	Apr	16	1999	Penly brief of Federal Appellant filed. VIDED.
	Apr	16	1999	Reply brief of appellants George Price, et al. filed. VIDED.
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# 98 406 SEP 4 1998

No. 98-\_\_

OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1997

GEORGE PRICE, et al.,

Appellants,

V.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the United States District Court for the District of Columbia

### JURISDICTIONAL STATEMENT

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### QUESTION PRESENTED

Does the purpose prong of Section 5 of the Voting Rights Act prohibit the implementation of an unconstitutional, racially discriminatory redistricting plan that is not retrogressive?



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### JURISDICTIONAL STATEMENT

### OPINION BELOW

The decision of the three-judge panel of the United States District Court for the District of Columbia ("District Court") is reported at 7 F. Supp. 2d 29 (D.D.C. 1998). App. 1a.1

In this Jurisdictional Statement, filed on behalf of Defendant-Intervenors George Price, et al., unless otherwise noted, citations are to the Appendix ("App.") filed with the Jurisdictional Statement of Janet Reno, et al., on September 4, 1998 in the case of Reno v. Bossier Parish School Board.

### JURISDICTION

The judgment of the three-judge panel of the District Court, which had jurisdiction pursuant to 42 U.S.C. § 1973c, was entered on May 4, 1998. The notice of appeal on behalf of defendant-intervenors George Price, et al. ("Defendant-Intervenors"), was timely filed on July 6, 1998. See Appendix attached hereto at 1a. This Court has jurisdiction over this appeal pursuant to 42 U.S.C. § 1973c.

# PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part that "[n]o state shall... deny any person within its jurisdiction the equal protection of the laws." The Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, is reproduced in the Appendix. App. 244a-246a.

### **STATEMENT**

### I. INTRODUCTION

This is the second time that the redistricting plan for the Bossier Parish School Board ("Bossier" or "School Board") following the 1990 census has come before this Court. In 1997, this Court reviewed the grant of preclearance under Section 5 of the Voting Rights Act by a three-judge panel of the United States District Court for the District of Columbia.

The Court remanded this case to the District Court to apply the standard of Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), to the question of whether the Bossier Parish School Board had met its burden under Section 5 of the Voting Rights Act to prove that it did not adopt its redistricting plan with "the purpose ... of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. Reno v. Bossier Parish School Board, 117 S. Ct. 1491 (1997); App. 29a-77a. This

Court directed that the existence of a "nonretrogressive, but nevertheless discriminatory, 'purpose' . . . and its relevance to § 5, are issues to be decided on remand." App. 46a.

Although two judges on the District Court panel on remand, Judges Laurence Silberman and James Robertson, concluded that the Board acted with "a tenacious determination to maintain the status quo" that diluted minority voting strength, they, nevertheless, granted preclearance. App. 7a. See also App. 25a. By failing to recognize this as a "non-retrogressive, but nevertheless discriminatory, purpose," the panel majority effectively held that an unconstitutional, racially discriminatory purpose does not violate Section 5 unless it actually worsens the position of minority voters.

The third judge on the panel, Judge Gladys Kessler, in dissent, concluded as follows, based on her reviews of the "extensive record" both in the original proceedings and again on remand: "Not only does the evidence fail to prove the absence of discriminatory purpose, it shows that racial purpose fueled the School Board's decision." App. 117a. See also App. 12a. Judge Kessler urged that the panel squarely address this Court's other question on remand, since under the Court's precedents, an unconstitutional purpose violates Section 5 regardless of whether it is retrogressive. App. 18a.

The panel majority's radical reworking of the standards governing review of discriminatory purpose under Section 5 conflicts with the plain language of the statute and this Court's clear precedents. It also poses a significant threat to effective administration of Section 5 in jurisdictions such as Bossier Parish, where such enforcement is most needed.

### II. STATEMENT OF FACTS

The facts in this case are largely undisputed and are nearly all either stipulated or unrebutted. The majority and the dissenting opinions below reflect similar conclusions on the few factual disputes. On remand, the parties all agreed that the record should not be reopened for the taking of additional evidence. App. 1a. Thus, the dispute in this case is not about the facts but about their legal significance in determining whether the Board met its burden to show that its redistricting plan was not motivated by a discriminatory purpose in violation of Section 5.

This Court's prior opinion in this case makes clear that the relevant factors are those discussed in Arlington Heights. Unrebutted evidence of discriminatory purpose, much of it in the form of stipulations, App. 145a-232a (¶¶ 1-285), addressed all of those factors: (1) "[t]he impact of the official action whether it 'bears more heavily on one race than another"; (2) "[t]he historical background of the decision"; (3) "[t]he specific sequence of events leading up to the challenged decision [including] ... [d]epartures from the sequence"; "[s]ubstantive procedural (4) normal departures . . . [from] factors usually considered important"; and (5) "administrative history" and other "contemporary statements by members of the decisionmaking body." 429 U.S. at 266-268. The facts with respect to each of these areas are summarized below.

A. The Effect of the Plan. In 1992, in response to the need to redistrict for one-person-one-vote purposes following the 1990 census, the School Board adopted a twelve single-member-district reapportionment plan with twelve majority-white districts. The Board's plan during the 1980's also had no majority black districts. By 1990, however, Bossier Parish, Louisiana had a population that was 20.1% black, App. 146a (¶ 5), and a voting age population that was 17.6% black. *Id.* at 2a. No black candidate, however, had ever been elected to the twelve-member School Board. *Id.* at 145a (¶ 4).

As the parties stipulated below, this is because voting in Bossier Parish is racially polarized. *Id.* at 201a-207a (¶¶ 181-196).<sup>2</sup> The foreseeable impact of the Board's adoption of a

The adverse effects of racially polarized voting on the ability of black voters to elect candidates of their choice are exacerbated in Bossier Parish by the effects of past discrimination. App.

redistricting plan with all majority-white districts, therefore, was to ensure that whenever black voters and white voters prefer different candidates, white voters' preferences will prevail, App. 119a-120a, perpetuating a racially "discriminatory status quo." App. 25a.

It was clearly possible, however, respecting traditional redistricting criteria, to draw a reapportionment plan for Bossier Parish that does not have all majority-white districts. App. 119a. The School Board stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," id. at 154a-155a (¶ 36), and that the outlines of a second such district in the northern part of the parish were "readily discernible." Id. at 194a (¶ 148). Admittedly, by fragmenting or "fracturing" predominantly black residential areas, however, the Board avoided drawing any majority-black districts. Id. at 190a-192a (99 137-138, Indeed, on remand, Bossier conceded that "[t]he impact of [its] plan does fall more heavily on blacks than on whites," and, more specifically, that its election plan "did dilute black voting strength." Plaintiff's Brief on Remand at 12, 21.

B. The School Board's History. The School Board's history of discrimination against black citizens demonstrates why it wanted twelve majority white districts; so long as black voters had no voice, the School Board could safely ignore their concerns, and for decades this has been the case. As the majority below recognized when it examined this evidence on remand, "the intent [this history] proves . . . is a tenacious determination to maintain the status quo." App. 7a.

<sup>210</sup>a-216a (¶¶ 213-232) (past history of denial of access to political system); id. at 216a-218a (¶¶ 234-243) (history of discrimination in education). It was undisputed below that the depressed socioeconomic and educational levels of black citizens of Bossier Parish make it hard for them to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote; these factors in turn cause a depressed level of political participation. Id. at 207a-210a (¶¶ 197-202, 206-212).

The dark history of voting discrimination in Bossier Parish was undisputed below. App. 210a-216a (¶ 214-232); id. at 120a-125a. Likewise, the School Board admitted that it segregated its schools, actively resisted desegregation, and has never fully remedied its constitutional violation. In recent years, moreover, the School Board's student and faculty assignment policies have made its schools more racially isolated than they were when it unsuccessfully applied for unitary status in 1979. App. 216a-218a (¶ 231-243); id. at 123a-125a.

Black citizens have tried without success to alter these policies and practices. Bossier is required by federal court order to maintain a biracial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." App. 182a (¶ 111). The Board admitted that, for decades, it simply ignored this requirement altogether. Id. at 182a-183a (¶ 112). In 1993, the Board established a committee; but when black members substantive suggestions, the Board unilaterally disbanded the committee. App. 184a (¶ 116); id. at 124a. As School Board members admitted, they did not want this committee getting into "policy" questions. Id. Even in the face of a federal court mandate to listen to the concerns of the black community, Bossier refused to do so. As a result, the black citizens of Bossier Parish are effectively cut off from any opportunity to have a voice in the operation of their public schools. Adopting a redistricting plan with twelve majority-white districts continued this pattern of exclusion. This history, as the majority found on remand, "provides powerful support for the proposition that . . . Bossier ... resisted adopting a redistricting plan that would have created majority black districts." App. 7a.

C. The Sequence of Events Leading Up to Adoption of the Plan. The Board initially ignored requests by black leaders to participate in the redistricting effort, employing a process characterized by "public silence and private decisions." App. 128a. The redistricting process began in May 1991, when the Board decided to develop its own plan

rather than adopt the one previously accepted by the Police Jury.<sup>3</sup> Given the fact that the next School Board election was not scheduled until November 1994, there was no need for hasty Board action. *Id.* at 82a. The Board hired Gary Joiner, the cartographer who had drawn the Police Jury plan. *Id.* He was hired to perform 200-250 hours of work, far more time than would be needed simply to recreate the Police Jury plan. *Id.* at 173a-174a (¶¶ 86-87).

On July 29, 1991, the Police Jury plan was precleared by the Justice Department. App. 80a. The parties stipulated, however, that the Police Jury had provided incorrect and incomplete information in its Section 5 submission. For example, the Police Jury and Gary Joiner were "specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City." ld. at 154a, 160a-161a, 162a (99 36, 52-53, 57). However, they deliberately misled the public, id. at 161a-162a (¶ 54), the only black police juror, id. at 159a (¶ 47), and the Attorney General, id. at 165a-166a (99 65-66), by claiming that drawing any majority-black district was impossible. Despite these misrepresentations, some black community groups opposed the plan and specifically asked that their letter expressing concerns about it be included in the Police Jury's Section 5 submission. Id. at 147a, 165a-166a (99 11, 65-66). Joiner and the Police Jury did not include it. Id. Had the Police Jury made a complete and truthful submission, the Attorney General clearly would have denied preclearance.

School Board member Thomas Myrick participated in several private meetings with Joiner and white police jurors during this time. App. 82a; id. at 159a-160a, 172a-173a (¶¶ 48, 85). After these meetings, Myrick, who lives in an area that "would likely be included in any majority black district to be drawn in the northern part of Bossier Parish," id.

<sup>&</sup>lt;sup>3</sup> The Police Jury is the Parish governing body, comparable to a county council or commission in most states. App. 2a; *id.* at 145a (¶ 3).

at 160a (¶ 48), recommended that the School Board adopt the Police Jury plan. *Id.* at 174a (¶ 90). On September 5, 1991, however, the School Board decided *not* to adopt the Police Jury plan, largely because it would pit incumbents against each other. App. 125a. Over the course of the next year, School Board members considered a number of redistricting options. *Id.* Joiner met privately with School Board members and demonstrated different possibilities to them on his computer. *Id.* at 176a (¶ 96). These meetings were not open to the public; nor were there any recorded minutes or published notices of the meetings. *Id.*; App. 126a.

While the School Board was meeting and planning in private, the black community was trying, unsuccessfully, to participate in public. *Id.* In March of 1992, George Price, on behalf of a coalition of black community groups, wrote to the School Board asking to participate in its redistricting process. App. 82a; *id.* at 175a (¶ 93). Neither the Board nor the Superintendent responded to this request. *Id.* In August of 1992, Price sent another letter asking specifically to be involved in every aspect of the redistricting process. Again, the School Board made no response. *Id.* (¶ 94).

Frustrated by the School Board's unresponsiveness, Price contacted the NAACP Redistricting Project in Baltimore, Maryland. App. 177a (¶ 98). The Project was able to develop a partial plan for Price to discuss with the School Board. That illustrative plan consisted of two majority-black districts. Id. The plan did not show the other ten districts When Price gave this that made up the Parish. Id. information to a school district official, he was told that it would not even be considered because it only showed two districts. Id. (¶ 99). Price went back to the NAACP, and a complete twelve-district illustrative plan was drawn up. Id. Then, on September 3, 1992, when Price appeared on behalf of the black community at a Board meeting and presented a new plan showing all twelve districts, including ten majority-white and two majority-black districts, the Board dismissed it summarily, claiming incorrectly that it could not even consider any plan that split precinct lines. Id. at 177a179a (¶¶ 100-102). Until that time, however, the School Board had been actively considering alternatives to the Police Jury plan, almost all of which would have split precincts. See App. 107a; id. at 151a (¶ 23).

At the School Board's next meeting, on September 17, 1992, Price again presented the NAACP's illustrative plan. App. 179a-180a (¶ 106). Instead of discussing the plan with Joiner, or asking him to further analyze the possibility of drawing black-majority districts without splitting precincts (the School Board's purported reason for rejecting the plan, but see id. at 151a (¶ 23)), the Board responded by immediately passing a motion of intent to adopt the Police Jury plan. Id. at 127a.

On September 24, 1992, an overflow crowd attended the state-mandated public hearing on the redistricting plan. App. 85a. Fifteen people spoke against the School Board's proposed plan, most of whom objected because it would dilute minority voting strength. App. 85a; id. at 180a-181a (¶ 108). Not a single person spoke in favor of the plan. Id. At this hearing, Price also presented the Board with a petition signed by more than 500 Bossier Parish citizens, asking the Board to consider an alternative redistricting plan. Id. at 85a.

Despite the one-sided input from Bossier citizens, and despite the fact that the Board was under *no* time pressure to decide the issue, the Board voted, at its very next meeting on October 1, 1992, to adopt the Police Jury plan. As with the meetings of September 3 and September 17, 1992, the minutes of this meeting reflect virtually no substantive consideration of the Police Jury plan.

Board Member Myrick later testified that the Board adopted the plan that evening because it was "expedient." App. 128a. The Police Jury plan only became "expedient" when the School Board was publicly confronted with an illustration that alternatives to twelve white-majority districts were possible. *Id.* Faced with the growing frustration of the black community at being excluded from educational policy decisions and from the electoral process, the only way for the

School Board to ensure a plan with all majority-white districts was to adopt the Police Jury plan quickly, despite its other drawbacks. App. 128a; id. at 85a, 106a.

- D. The Plan Adopted Compared to Traditional The Board, without explanation, Districting Criteria. adopted a plan that departs substantively from its earlier districting plans and ignores factors that it had previously considered paramount. App. 128a-129a. The plan forced incumbents to run against one another. Id. at 85a. It also created several districts that, according to its own cartographer, are not compact, id. at 191a (¶ 139), including Thomas Myrick's district, which contains almost half of the geographic area of the Parish. Id. (¶ 140). These districts do not track school attendance boundaries. In fact, some of them do not even contain a school. App. 85a; id. at 191a (¶ 141). However, they do split black communities, and all of them have a white majority. Id. at 190a (99 135-137). The panel majority below found that those departures from the Board's traditional districting criteria "establish[] rather clearly that the Board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." App. 7a.
- E. The Board Members' Contemporaneous State-The School Board "left virtually no legislative history" of its decision. App. 134a n.11. Three School Board members, however, made contemporaneous statements revealing the Board's discriminatory purpose. App. 83a n.4. Board member Henry Burns told a black acquaintance that while he "personally favors having black representation on the board, other school board members oppose the idea." Id. The School Board offered no evidence denying or explaining this statement. School Board member Barry Musgrove told a prominent black leader that "while he sympathized with the concerns of the black community, there was nothing more he could do . . . on this issue because the Board was 'hostile' toward the idea of a black-majority district." Id. Finally, School Board member Thomas Myrick, who lives in an area that could readily accommodate

a black-majority district and contains two schools (both of which have student enrollments that are more than 75% black), told black leaders that he would not "let [them] take his seat away from him." *Id*.

F. The Board's Later Explanations of Its Motives. After the fact, the School Board sought to justify its actions with a flurry of explanations, including several that, even before this Court's remand, the majority below had found "clearly were not real reasons." App. 106a n.15. For example, the School Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with Shaw v. Reno, 509 U.S. 630 (1993) (decided June 28, 1993), even though Shaw was decided nine months after the Board adopted its plan. Id.

The School Board also reiterated its false claim that it could not adopt a plan without twelve majority-white districts because any such plan would require precinct-splitting. which it erroneously claimed violates state law. App. 135a. Throughout the redistricting process, however, the School Board was willing to split precincts for the protection of It was only after the black community incumbents. Id. presented its alternative plan that the School Board proffered the "no precinct-splitting" rationale. Id. Indeed, the majority below found that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." Id. at 107a. Furthermore, it was andisputed that splitting precincts does not violate state law; while the School Board itself may not split precincts, police juries have the authority to establish and modify precinct lines, and many do so when requested by a school board. Id. at 148a-151a, 164a (99 13-25, 60-61). The School Board did not request precinct changes from the Police Jury.

Nor did the School Board voice any concern in its initial submission to the Attorney General about a high number of precinct splits causing higher election costs. App. 136a. The Board never estimated the cost of splitting precincts before it voted to adopt the Police Jury plan. *Id.* Obviously, "cost"

did not actually motivate the School Board's decision at the time it was made. Id.

Bossier's final proffered justification for adopting the Police Jury plan was that it guaranteed preclearance; that is, the Attorney General would approve the School Board's plan because it was identical to the Police Jury plan that already App. 136a-137a. had been precleared. "guaranteed preclearance" was not the School Board's main objective: if the School Board's paramount concern had been preclearance, it would not have waited until October 1, 1992-almost 14 months later-to adopt the Police Jury plan. Id. If guaranteed preclearance was so important to the Board, it would have acted soon after the Police Jury plan was precleared by the Justice Department on July 29, 1991. ld. Moreover, adopting a plan with one or more majorityblack districts certainly would not have made preclearance less likely.

#### III. THE PRIOR PROCEEDINGS

A. Administrative Preclearance Review. While the School Board had acted precipitously in approving its redistricting plan on October 1, 1992, the plan was not submitted to the Department of Justice for preclearance until January 4, 1993. App. 182a (¶110). After requesting additional information, the Attorney General interposed a timely objection to Bossier's plan. Id. at 233a, 185a (¶118-119). The School Board met in closed session and decided to seek reconsideration. Id. at 186a (¶120-122). The Attorney General denied this request on December 20, 1993. Id. at 238a, 187a (¶125).

### B. The Declaratory Judgment Action.

1. The Initial Proceedings. On July 8, 1994, Bossier filed this action against the Attorney General in the United States District Court for the District of Columbia. A group of black voters in Bossier Parish, George Price, et al., intervened as defendants in support of the Attorney General. The Defendant-Intervenors suggested below that the three-

judge court decide this case based solely on the issue of discriminatory purpose.

The Attorney General agreed that the evidence clearly established an unconstitutional discriminatory intent, but also argued that much of the same evidence also established a clear violation of Section 2 and that such a violation constitutes independent grounds for denying preclearance. The court below ruled that Section 2 analysis may not be incorporated into a Section 5 review. *Id.* at 89a-102a.

The majority, then Judges Laurence Silberman and Charles Richey, went much further, however, ruling that no "evidence of a section 2 violation" may be used to establish "discriminatory purpose under section 5." App. 101a (emphasis added). Ignoring the fact that much of the same evidence used in establishing a Section 2 violation is independently probative of discriminatory intent under Arlington Heights and other precedents of this Court guiding the inquiry into racially discriminatory intent or purpose, the majority flatly held that it would "not permit section 2 evidence to prove discriminatory purpose." Id. at 102a (emphasis added). As a result, the majority excluded from its consideration much of the evidence of discriminatory intent in this case.

The majority also erred by concluding that since it found that the School Board had "at least two . . . 'legitimate, nondiscriminatory motives,'" Bossier had met its burden of proof. App. 105a-106a (quoting New York v. United States, 874 F. Supp. 394, 400 (D.D.C. 1994)). The majority thus ignored the School Board's burden of producing some evidence that the proposed changes were not also motivated in part by an unconstitutional discriminatory purpose.

Judge Kessler, alone among the panel, considered the entire "extensive record" below and applied the Arlington Heights standard. She concluded that Bossier had failed to carry its burden of proving that it acted solely with "legitimate, nondiscriminatory motives." App. 116a (quoting New York, 874 F. Supp. at 400). Indeed, Judge Kessler, looking at all

the evidence, found that it "demonstrates overwhelmingly" that "racial purpose fueled the School Board's decision." *Id.* at 143a, 117a.

- 2. This Court's Decision. This Court upheld the District Court's unanimous conclusion that a Section 2 violation did not provide an independent basis for a denial of preclearance under Section 5, but vacated the majority's decision and remanded for the lower court to apply the Arlington Heights standard to all of the probative evidence of discriminatory purpose. App. 29a. The Court also directed the lower court to "decide[] on remand" whether there was any merit to the argument that Section 5's discriminatory purpose prong only reaches voting changes enacted with an intent to retrogress. App. 46a.
- 3. Proceedings on Remand. On remand, the majority (now Judges Silberman and James Robertson, who joined the panel after Judge Richey's death) "declined" to address the scope of Section 5's purpose prong, App. 3a, but then applied the Arlington Heights standard only to the question of whether the Board intended retrogression. Addressing only this issue, the majority concluded that Bossier had no retrogressive intent. App. 6a-7a.

Judge Kessler in dissent found that the majority erred in restricting the "§ 5 purpose inquiry to a search for intent to retrogress." App. 13a. She concluded that this "far too limited and narrow an inquiry" was not supported by the statute, its legislative history or the decisions of this Court. App. 24a, 14a.

Judge Kessler also again analyzed the voluminous evidence of the plan's impact and concluded that "it overwhelmingly demonstrates" that the plan dilutes black voting strength. App. 22a. Therefore, she found that the "majority's conclusion (that the School Board acted with an intent to maintain the discriminatory status quo) leads to denial of preclearance—under the purpose prong of § 5." App. 25a.

### REASONS FOR NOTING PROBABLE JURISDICTION

THIS COURT SHOULD CORRECT THE SUBSTANTIAL LEGAL ERROR MADE BY THE MAJORITY BELOW IN LIMITING THE INQUIRY INTO THE EXISTENCE OF DISCRIMINATORY PURPOSE SOLELY TO A SEARCH FOR AN INTENT TO CAUSE A RETROGRESSION IN MINORITY VOTING STRENGTH.

The majority below erroneously limited its Section 5 discriminatory purpose inquiry to a search for an intent to retrogress. This unprecedented ruling (1) evades a central issue presented by this Court's remand; (2) departs from the controlling precedents of the Court; and (3) impairs Section 5 enforcement in jurisdictions like Bossier Parish in which its application is most vital.

A. The Court Below Erroneously Declined to Address the Issue Squarely Presented to It by This Court's Remand: Whether Bossier Had a Discriminatory, But Nevertheless Nonretrogressive, Purpose in Enacting its Redistricting Plan.

As Judge Kessler pointed out in dissent, this Court stated that, while it did not assume "that the Board enacted the Jury plan with some non-retrogressive but nevertheless discriminatory 'purpose', the existence of such a purpose, and its relevance to § 5, are issues to be decided on remand." App. 13a (quoting 117 S. Ct. at 1501 [App. 46a]). This instruction required the court below (1) to address the relevance of a "non-retrogressive, but nevertheless discriminatory purpose" to Section 5, and (2) to inquire into existence of such a discriminatory purpose in this case. *Id.* The majority, however, erred in expressly "declining" to carry out the first mandate from this Court and, as a result, failed to conduct the second inquiry either. App. 3a.

This is plainly error, for this case has never been about retrogression. As the majority acknowledged, before trial, the parties stipulated that the retrogression caused by the Board's Plan was de minimus. App. 6a. Rather, the parties having stipulated to facts showing the dilutive impact of the plan on minority voting strength, the Defendant-Intervenors and the Attorney General focused at trial on rebutting Bossier's weak effort to show that this vote dilution was not intentional.

Instead of addressing the question presented by this proof and the Court's remand, the majority misinterpreted Arlington Heights by analyzing each factor tending to show discriminatory intent solely for the purpose of determining whether it showed an intent to retrogress. For example, the majority found that while "the historical background of the school board's adoption" of the plan "provides powerful support for the proposition that the . . . Board in fact resisted a redistricting plan that would have created majority black districts" and showed a "tenacious determination to maintain the status quo," it does not show the Board intended "retrogression." App. 6a-7a (emphasis added). Likewise, while the majority recognized that the "sequence of events . . does tend to demonstrate the school board's resistance to the NAACP plan; it does not demonstrate retrogressive intent." Id. at 7a (emphasis added). While the Board's departure from traditional districting criteria also "establishes rather clearly that [it] did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise," according to the majority, "it is not evidence of retrogressive intent." Id. (emphasis added). Finally, the majority disregarded the statements of board members indicating discriminatory purpose because "[t]hey do not establish retrogressive intent." Id. at 8a (emphasis added). Thus, with respect to each type of evidence in this case, the panel majority erroneously failed even to undertake the central task on remand: determining under the Arlington Heights standard whether the Board had met its burden of proving that it did not adopt its dilutive, but nonretrogressive, plan in part for an unconstitutional, racially discriminatory purpose.

As Judge Kessler observes, it was error for the majority to "have limited their § 5 purpose inquiry to a search for intent to retrogress." App. 13a. By so limiting its inquiry, the majority misinterpreted *Arlington Heights* and Section 5. Judge Kessler, who has now twice properly applied *Arlington Heights* without limiting her inquiry to the search for a retrogressive intent, has twice found that the facts "overwhelmingly demonstrate" that Bossier acted with an unconstitutional, racially discriminatory purpose that was not retrogressive. App. 143a, 22a.

The majority also erred in assuming that if a legitimate rationale for the Board's action was not disproved. Bossier was entitled to preclearance, despite the presence of such a discriminatory purpose. App. 5a. While, as Judge Kessler noted, the two nondiscriminatory motives found by the majority are pretextual, App. 14a-15a, see supra Statement at II.F., even if they were legitimate, they would not support Section 5 preclearance applying the Arlington Heights "purpose" standard. This Court has left no doubt that proving discriminatory intent does not require proof "that the challenged action rested solely on racially discriminatory purposes." 429 U.S. at 265. The test is whether a discriminatory purpose "has been a motivating factor in the decision." Id. at 265-266 (emphasis added). Thus, the Board's burden of proof under Section 5 was to show the absence of discriminatory purpose. Neither the majority's incorrect finding that the Board had "legitimate, nondiscriminatory motives" nor its inapposite conclusion that Bossier lacked a "retrogressive intent" is sufficient as a matter of law to meet this burden. App. 5a, 7a.

B. The Statute and the Decisions of This Court Make Clear that Section 5 Prohibits a Change in Election Procedures Adopted with an Unconstitutional Discriminatory Intent Whether or Not the Change Is Retrogressive.

Section 5's discriminatory purpose inquiry clearly extends beyond the search for retrogressive intent. Section 5 prohibits any unconstitutional discriminatory intent. Such an intent may take the form of an intent to retrogress, but on the facts of particular cases, such as this case, it can take other forms. The plain language of the statute and the consistent case law interpreting it leave no doubt that the "purpose" inquiry under Section 5 should be coextensive with the *Arlington Heights* analysis. Indeed, there is no support for the proposition that Section 5 was intended to provide *less* protection against racial discrimination than does the Constitution.

By its terms, Section 5 forbids any voting change unless the covered jurisdiction establishes that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. These words echo the language of the Fifteenth Amendment: "The right of citizens... to vote shall not be denied or abridged... on account of race or color...." Congress' use of constitutional language indicates that one purpose forbidden by Section 5 is the purpose of unconstitutionally diluting minority voting strength. See App. 57a (Breyer, J., concurring). There is nothing in the plain and unambiguous language of Section 5 to suggest that Congress intended a Section 5 court or the Attorney General to preclear a dilutive plan adopted with an unconstitutional purpose.

Given that the "starting point" for assessing discriminatory purpose under Arlington Heights is the impact of the proposed action, 429 U.S. at 266 (citing Washington v. Davis, 426 U.S. 229, 242 (1976)), limiting the Section 5 discriminatory purpose inquiry to the existence of "retrogressive intent" would make that analysis redundant. What jurisdiction intending to retrogress would adopt a non-retrogressive plan? Likewise, since any plan with a retrogressive impact also would violate the effect prong of Section 5, the purpose prong would be superfluous.

This Court also has held repeatedly that intentional minority vote dilution is a harm against which Section 5 guards and that a prohibited discriminatory purpose need not be retrogressive. As Justice Breyer wrote in his concurrence

in this case, "the 'purpose' inquiry does extend beyond the search for retrogressive intent." App. 56a.

While the majority opinion purported to "leave open for another day" that question, the Court has answered it already, repeatedly and consistently. In 1966, the Court upheld the constitutionality of the Voting Rights Act in South Carolina v. Katzenbach, 383 U.S. 301, and recognized that Section 5 extends at least as far as the Fifteenth Amendment. Id. at 334 (Section 5 requires a determination whether voting changes "would violate the Fifteenth Amendment"). See also Allen v. State Bd. of Elections, 393 U.S. 544, 556 (1969). Subsequently, in cases like City of Pleasant Grove v. United States, 479 U.S. 462, 469-472 (1987), Busbee v. Smith, 459 U.S. 1166 (1983), and City of Richmond v. United States, 422 U.S. 358 (1975), the Court has been presented directly with and rejected the argument that Section 5 does not prohibit nonretrogressive voting changes enacted unconstitutional discriminatory intent.

In the first of these cases, City of Richmond v. United States, 422 U.S. 358 (1975), the Court remanded for a determination of discriminatory purpose where the election change had no retrogressive effect. In rejecting the argument that such a remand was unnecessary, the Court explained the obvious logical implication of its prior observations in Katzenbach and Allen:

The answer is plain, and we need not labor it. An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color. . . . An annexation proved to be of this kind and not proved to have a justifiable basis is forbidden by § 5, whatever its actual effect may have been or may be.

422 U.S. at 378-379 (emphasis added).

Later in Busbee v. Smith, 459 U.S. 1166 (1983), the Court summarily affirmed a three-judge court's denial of Section 5 preclearance to a redistricting plan that was not merely nonretrogressive but actually ameliorative, in that it increased black voting strength. 549 F. Supp. 494, 516 (D.D.C. 1982). The district court explained that "[s]imply demonstrating that a plan increases black voting strength does not entitle the State to the declaratory relief it seeks; the State must also demonstrate the absence of discriminatory purpose." Id. In its appeal to this Court, the state claimed that this was legal error, but this Court rejected that argument and summarily affirmed the district court.

Yet again in *Pleasant Grove*, the Court rejected the argument that a nonretrogressive change could not violate the purpose prong of Section 5. The Court found that the city had failed to prove that its annexation of certain white areas lacked a discriminatory purpose. Despite the fact that the annexation lacked a retrogressive effect, the Court denied Section 5 preclearance. 479 U.S. at 472; see also id. at 474-475. (Powell, J., dissenting) (contending that the majority erred in holding that a discriminatory purpose could be found even though there was no intent "to have a retrogressive effect"). Thus, the limitation that the panel below set for itself of reviewing the evidence only for intent to retrogress is contrary to this Court's decisions rejecting the argument that Section 5 does not prohibit a nonretrogressive voting change enacted with an unconstitutional, discriminatory intent.

Jurisdictional Statement at i, Busbee v. Smith, 459 U.S. 1166.

<sup>&</sup>lt;sup>4</sup> The questions presented in Busbee were:

A. Whether a Congressional reapportionment plan that has no discriminatory effect, that enhances black voting strength, and that provides blacks with equal access to the political process can be deemed to violate Section 5 of the Voting Rights Act.

B. Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level of black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act.

This Court's more recent decision in Miller v. Johnson, 515 U.S. 900 (1995), confirms this long-standing view of the purpose prong of Section 5. In Miller, the Court expressly acknowledged its previous decisions, see, e.g., Pleasant Grove, 479 U.S. at 469, which recognize discriminatory purpose as a distinct basis for the denial of preclearance under Section 5. See also Busbee, 549 F. Supp. at 516-517; City of Port Arthur v. United States, 517 F. Supp. 987 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982).

The Court in Miller also relies upon Beer v. United States, 425 U.S. 130 (1975). In both Beer and Miller, the Court expressly reaffirmed that purposeful racial discrimination remains an independent basis for a Section 5 objection. In Beer, the Court held that "a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional." 425 U.S. 142 n.14. The Court in Miller reiterated that even an "ameliorative" plan can violate Section 5 if "the new apportionment itself so discriminates on the basis or race or color as to violate the Constitution." 515 U.S. at 923 (citations omitted). By now, therefore, it is well settled that in analyzing discriminatory purpose under Section 5, the question is whether the jurisdiction has established the absence of any unconstitutional discriminatory intent, not merely an intent to retrogress.

C. By Improperly Limiting the Section 5 Discriminatory Purpose Inquiry, the Majority Below Would Severely Undermine Effective Administration of Section 5 in Jurisdictions Such as Bossier Parish, Where Such Enforcement Is Most Needed.

In jurisdictions, like Bossier Parish, with poor disenfranchised minority communities, limiting Section 5's purpose inquiry only to cases already involving retrogression would insulate intransigent and damaging racial discrimination in the electoral process. However, Congress' fundamental purpose in enacting Section 5 was to keep jurisdictions like Bossier, with a long history of voting

discrimination, from finding new methods of perpetuating their discriminatory ways. H.R. Rep. No. 89-439, at 8-9 (1965); S. Rep. No. 89-162, pt. 3, at 13-15 (1965). To accomplish this, Congress shifted to covered jurisdictions the burden of proving the absence of discriminatory purpose or effect.

During the course of the hearings and debate on the Act, Congress found that prosecuting cases to enforce constitutional prohibitions against voting discrimination was lengthy and time-consuming. H.R. Rep. No. 89-439, at 9-11; S. Rep. No. 89-162, pt. 3, at 6-9. Moreover, even when cases were successfully prosecuted, effective relief was difficult to obtain; when discriminatory voting devices were eliminated, many of the jurisdictions found new ways to discriminate. H.R. Rep. No. 89-439, at 10-11; S. Rep. No. 89-162, pt. 3, at 8, 12.

Bossier Parish is precisely such a jurisdiction in which discriminatory patterns have been successfully perpetuated in voting, as in other areas, in part because of the inability of the local minority community to bring and maintain successful legal challenges. In such jurisdictions, Section 2 does not provide a remedy that most victims of voting discrimination can use effectively. As Congress recognized, the process is lengthy, time consuming and expensive, and the burden of proof rests on the plaintiffs, who like the Defendant-Intervenors here are often excluded from the redistricting process and denied accurate information. See supra Statement II.C.

Moreover, in Bossier Parish, such complex civil rights litigation has proven prohibitively expensive. The record here shows, for example, that the local black community was unable to force the Board to comply with outstanding desegregation orders. App. 216a-218a. As a result, the Board was able to ignore and to violate its court-ordered desegregation obligations. J.A. at 90-91 (Davis). Likewise, the Bossier Parish Police Jury was able to enact a

Joint Appendix in Reno v. Bossier Parish School Board, Nos. 94-1455 and 95-1508.

discriminatory redistricting plan and falsely claim that it was impossible to draw any election districts containing a majority of black voters; no one in the local black community had the resources to unmask this misrepresentation until after the plan had already been precleared. See supra Statement II.C. In a poor, rural, racially divided community like Bossier Parish, Section 5 is our best hope for electoral justice, and fair elections are our only real hope for racial justice and equal educational opportunity.

In Bossier Parish, moreover, it would be virtually impossible to oppose preclearance if such opposition required a demonstration of a retrogressive effect. Most obviously, in terms of the number of election districts in which minority voters have a fair opportunity to elect their candidates of choice, it is impossible to retrogress from zero.

Moreover, for elected officials bent on discrimination, if minority voters already can elect no candidates of their choice, there is no need for further retrogression. Even if minority voting strength could have been more diluted mathematically, it could not have been diluted any more effectively. To condone the intentional perpetuation of such a situation would transform the Board's "extraordinary success in resisting integration . . . [into] a shield for further resistance." *Pleasant Grove*, 479 U.S. at 472. And, as this Court has held, "[n]othing could be further from the purposes of the Voting Rights Act." *Id*.

### CONCLUSION

The evidence below, when fully considered as Judge Kessler did, "demonstrates overwhelmingly" that Bossier's action "was a thinly veiled effort to deny black voters a meaningful opportunity for representation on the School Board." App. 143a-144a. This action is unconstitutional and, therefore, violates Section 5.

The majority's contrary interpretation of Section 5's purpose prong, as prohibiting only the intent to retrogress, contradicts this Court's clear precedents. Therefore, the

Court should note probable jurisdiction and correct this substantial legal error.

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### APPENDIX

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BOSSIER PARISH
SCHOOL BOARD,

Plaintiff,

v.

Civil Action No. 94-01495
JANET RENO,

Defendant,

Defendant,

DefendantIntervenors.

### DEFENDANT-INTERVENORS' NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that all of the defendant-intervenors in the above named case, George Price, Leroy Harry, Thelma Harry, Clifford Doss, Jerry Hawkins, Odis Easter, Barbara Stevens King, Hurie Jones, Grover Cleveland Jaggers, Floyd Marshall, and Rubie Fouler, hereby appeal to the United States Supreme Court from the final judgment of the three-judge district court, entered on May 4, 1998, granting preclearance, pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, to the plaintiff.

This appeal is taken pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 1253.

Respectfully submitted,

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July 6, 1998

[Certificate of Service Omitted in Printing]



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No. 98-405, 98-406

DEC 14 1998

DEC 14 1998

In The

## Supreme Court of the United States

October Term, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, et al.,

Appellants,

V.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

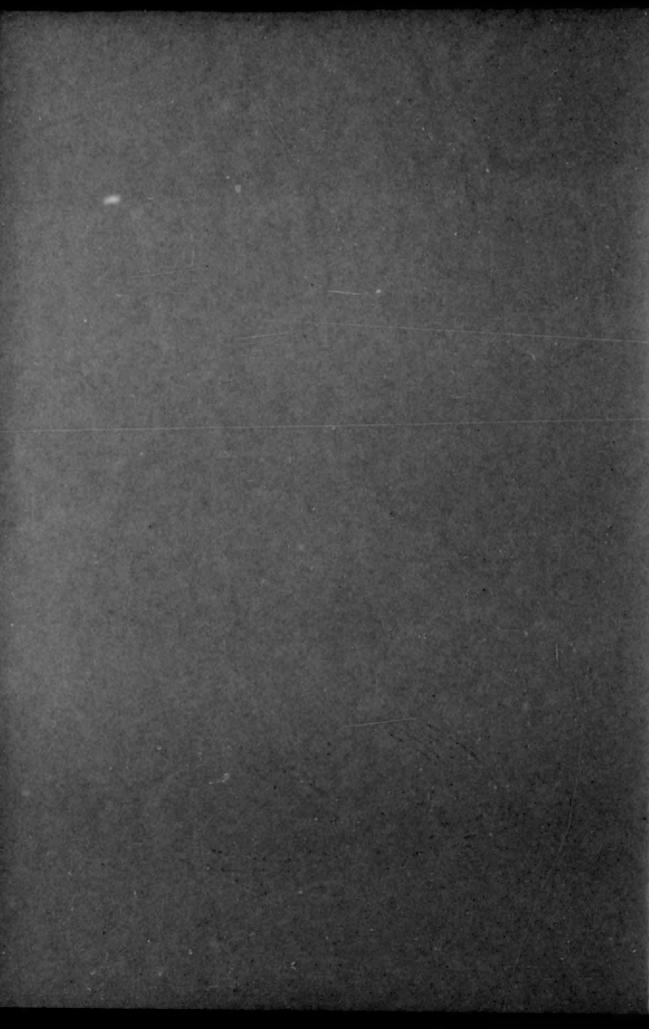
On Appeal From The United States District Court For The District Of Columbia

#### MOTION TO DISMISS OR AFFIRM

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Appellee moves to dismiss or affirm on the ground that the Court lacks jurisdiction and that the question presented is so insubstantial as not to need further argument.

#### COUNTERSTATEMENT

Appellants desperately seek to obscure several dispositive factual issues that demonstrate that this Court should not review the validity of the Bossier Parish School Board's redistricting plan. Specifically, in adopting the plan at issue here, the School Board selected the only plan presented to it that conformed to state law, since private appellants' maximization plan (the "NAACP plan") concededly constituted a facial violation of state law and thus was "null and void." J.A. 266.1 Moreover, the plan that was chosen had already been precleared by the Department of Justice just one year before. Standing alone, these two legitimate interests demonstrate that the School Board did not adopt its redistricting plan with a discriminatory purpose. The election results under this plan underscore this conclusion. There have been two elections conducted pursuant to the plan. In 1994, two black candidates were elected to the School Board, one from a district which was only 26.7% black. J.A. 47; jurisdictional statement of the United States at 5 n.3 ("U.S. J.S."). In 1998, these two black incumbents were reelected without opposition. In this election, a third black candidate ran for office and was elected over a white Republican in a district that is only 21.1% black. J.A. 47. Thus, under the School Board's plan, there are now currently three black members on the School Board. Despite the success of minority candidates running under the plan, appellants seek to have this Court invalidate this plan on the ground that it was discriminatory for the School Board not to have adopted a racially gerrymandered redistricting plan with two black-majority districts.

<sup>&</sup>lt;sup>1</sup> In this brief, citations are to the Appendix ("App.") filed with the jurisdictional statements in this appeal and to the Joint Appendix ("J.A.") filed in the prior appeal in this case.

In any event, a remand here to require the district court to consider whether it was necessary to adopt appellants' maximization plan would be both counterproductive and futile. As the minority population of Bossier Parish is already represented by three minority members on the School Board. it would be nonsensical to require the School Board to adopt a plan that packs the black population into two octopus-like districts, and thereby diminishes the prospects for electing a third minority member. Moreover, any such effort would be pointless as the next elections for the School Board will not be held until 2002. By that time, new census figures will be available, and the School Board will be required to redistrict prior to its next elections. Thus, the School Board plan will never again be utilized. As we demonstrate below, this incontrovertible fact renders any decision as to the future application of the plan wholly advisory under Article III, as appellants have no legally cognizable interest in enjoining an otherwise moribund law and appellee has no interest in a declaratory judgment relating to a plan it has abandoned.

In light of appellants' gross factual distortions, an extended counter-statement of the case is required.

Bossier Parish is located in northwestern Louisiana and is governed by a Police Jury, the 12 members of which are elected from single-member districts for consecutive four-year terms. Although no electoral district of the Police Jury has ever had a majority of black voters, Jerome Darby, a black resident of Bossier Parish, had been elected three times (the last time without opposition) by 1992 to represent a majority-white district as a member of the Police Jury. App. 79a. Another black representative preceded Mr. Darby in that district.

Because of demographic shifts that were reflected in the 1990 census, the Police Jury was obliged by Louisiana law to redraw its electoral districts. The aim of this redistricting was to change existing boundaries as little as possible while fashioning districts of roughly the same population. App. 79a. On April 30, 1991, all members of the Police Jury, including

Jerome Darby, its black member, approved a plan containing two districts with substantial black populations, but no district with a black majority. Specifically, District Four was 45.2% black, and District Seven was 43.9% black. App. 167a ¶ 59. The plan was submitted to the Justice Department on May 28, 1991, and on July 29, 1991, the Attorney General precleared it. Contrary to the insinuations of the appellants, the Police Jury submitted all materials required under Section 5; a covered jurisdiction is under no obligation to submit objections received from citizens or special interest groups. 28 C.F.R. §§ 51.53-51.58. After the Attorney General's preclearance, new elections were held. For the third consecutive time, Jerome Darby was elected from a majority-white district. App. 79a.

The Bossier Parish School Board was also required to redraw its electoral districts. Given that the School Board and the Police Jury had shared the same district boundaries until 1980, the School Board approached the Police Jury to formulate a common redistricting plan. App. 79a. The Police Jury rejected this overture and adopted its own redistricting plan. State law expressly prohibited the School Board from changing, splitting, or consolidating the precincts established by the Police Jury for the Police Jury's 1991 redistricting plan. J.A. 265-66 ("The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1."). Thus, it would have been a facial violation of state law for the School Board to adopt the NAACP plan, or for that matter any plan that created a black majority district, because as the parties have stipulated: "[i]t is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines." App. 195a ¶ 152. The failure to abide by this mandatory state law requirement would have rendered the Board's plan "null and void." J.A. 266.

Appellants have sought to undermine the force of this state law requirement by consistently making the demonstrably false assertion that the School Board could have requested the Police Jury to split precinct lines so that the NAACP plan might be adopted. Appellants neglect to mention the unambiguous state law which makes clear that the School Board could not have gone back to the Police Jury in an effort to have precincts split. Under state law, the School Board was required to redistrict prior to December 31, 1992. J.A. 65; LA R.S. 17:71.5A. And under state law, the Police Jury could only make changes to its existing precincts after December 31, 1992. J.A. 277. Thus, it was impossible for either the School Board or the Police Jury to sanction any precinct splits prior to the mandatory deadline for the School Board to adopt a redistricting plan.2 This requirement under state law that school boards and Police Juries use the same precincts as "building blocks" for their districts is, of course, entirely rational.3 Splitting precincts by divergent district lines engenders substantial costs and creates significant voter confusion. App. 107a; see Bush v. Vera, 517 U.S. 952, 974-75

<sup>&</sup>lt;sup>2</sup> The United States argued in *Bossier I* that it was permissible for the Police Jury to *consolidate* precincts after January 1, 1993. See Transcript of Supreme Court Oral Argument at 55-56. This, of course, is irrelevant because there is nothing to consolidate if precincts have not been split in the first place. As noted, such splits could not occur because both the *Police Jury and the School Board* were barred from splitting precincts in the timeframe permitted under state law for the School Board to finalize its redistricting plan.

<sup>3</sup> Although it is true, as appellants note, that the Police Jury and School Board used different district lines for the first time in the 1980s, they had never split precinct lines and there is no evidence that any of the redistricting plans submitted for the Board's consideration by its cartographer created such splits. Appellants' own witness was able to cite only three examples of other Louisiana jurisdictions that had split a "few" precincts, J.A. 137, and all of those apparently were done to accommodate the Justice Department objections, as permitted by state law. J.A. 277. That is not relevant here as the Justice Department had not interposed any objection here in December 1992.

(1996). Thus, even assuming (as the district court did to give appellants every benefit of the doubt) that the Police Jury somehow could have retroactively created 65 additional precincts to render the NAACP plan lawful, neither it nor the School Board had any rational reason to do so.

Moreover, the conclusion that state law prohibited the adoption of any plan creating a black-majority district was uniformly acknowledged by the parties at the time the School Board was considering which plan to adopt. Specifically, the School Board was correctly advised both by its cartographer and the Parish's District Attorney during the September 3, 1992 meeting where the NAACP plan was presented that its massive number of precinct splits violated state law. App. 83a-84a; App. 179a ¶ 102. Likewise, the NAACP itself acknowledged this state law prohibition in 1992, and merely contended that the Supremacy Clause of the United States Constitution required the School Board to ignore state law. J.A. 122.

Subsequently, George Price, president of the local chapter of the NAACP and an appellant-intervenor in this case, submitted his own plan to the School Board that included two majority-black districts, the maximum possible number of such districts and roughly proportional (2/12) to the Parish's black population of 17.6%. App. 83a. The plan was drawn by William Cooper for the exclusive purpose of "creat[ing] two majority black districts," J.A. 260, wholly without regard to precinct boundaries. The NAACP plan subordinates traditional redistricting principles, such as compactness and respect for the political boundaries of towns, the Police Jury districts and precincts. A district court in a related case said of a modified, "improved" version of the NAACP plan, that it "most nearly resembles an octopus as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population to create not one, but two, majority-black districts in Bossier." J.A. 38.

In direct contravention of Louisiana law, the NAACP plan splits 46 precincts, 65 times. Plaintiff's Exh. 11, pp.

1-26; App. 29a. (Some of the precincts suffered more than a single split; thus requiring that they become three or more new precincts.) Of these, 17 precincts would have had less than 20 people in them. Plaintiff's Exh. 11, pp. 1-26.

On September 3, 1992, the School Board responded to NAACP concerns by granting its request that a black person be appointed to the vacant seat on the Board. Far from being a "meaningless palliative" as the government has previously contended, Brief for the Federal Appellant, Reno v. Bossier Parish Sch. Bd., 520 U.S. 471 (1997) (No. 95-1455) ("Bossier I") at 28, the appointment of Jerome Blunt is indicative of "the Board's demonstrable willingness to ensure black representation on the Board. . . " App. 112a (emphasis in original).

At the same September 1992 meeting, the Board also passed a motion of intention to adopt the Police Jury's redistricting plan. The jury plan offered "the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need [to be] redraw[n])". App. 106a. By maintaining the integrity of the Police Jury's precincts, the School Board not only complied with Louisiana law, but also avoided the costs and disruptions that would have accompanied the NAACP plan. Furthermore, the School Board understandably assumed that the Department of Justice would automatically preclear a plan that was identical to one the Department found to be entirely free of any discriminatory purpose or effect just one year before. The plan also offered the substantial promise that black voters would be able to elect a candidate of their choice as demonstrated by the fact that two districts were well over 40% black.

On January 4, 1993, the School Board submitted its plan to the Department of Justice for preclearance. Despite the identity between the Police Jury and School Board plans, the Department denied preclearance citing "new information, particularly the 1991 [P]olice [J]ury elections held under the 1991 redistricting plan and the 1992 redistricting process for the [S]chool [B]oard." App. 235a. Yet, the only noteworthy

event of the 1991 Police Jury elections was that Jerome Darby was once again re-elected, this time without opposition, to represent a majority-white district.

The clearest evidence of the opportunity of Bossier's black citizenry to participate meaningfully in the electoral process lies in the incontrovertible fact that three black candidates have now been elected to the School Board in 1998 under its plan. The election of three black members to the School Board under the new plan completely refutes appellants' repeated claim that the "clearly foreseeable effect" of the plan was to prevent any black candidates from being elected. See, e.g., Brief for the Federal Appellant, Bossier I at 22. It also conclusively refutes the wholly unsubstantiated speculation of the Justice Department's expert, Dr. Engstrom, that the white population will not vote for black candidates in Bossier Parish.

<sup>&</sup>lt;sup>4</sup> It is well established that a court may take judicial notice of any fact that is not subject to reasonable dispute and is capable of accurate and ready determination. See, e.g., Fed. R. Evid. 201. Accordingly, appellate courts have routinely taken judicial notice of post-trial elections in voting rights cases given their clear relevance to the proceedings. See, e.g., Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281, 1288 n.13 (11th Cir. 1995), cert. denied, 516 U.S. 1045 (1996) ("To provide a current depiction of the composition of the [Alabama Supreme Court] we have taken judicial notice of information not available at the time the district court rendered its decision."); Westwego Citizens for Better Gov't v. City of Westwego, 906 F.2d 1042, 1045 (5th Cir. 1990) (noting that "given the long term nature and extreme costs necessarily associated with voting rights cases, it is appropriate to take into account elections occurring subsequent to trial.").

<sup>5</sup> There is no competent evidence of racial bloc voting in any local Bossier Parish elections. Specifically, Dr. Engstrom was concededly unable to find any racial bloc voting in any election for any Bossier Parish office, pursuant to either the "extreme case analysis [or] bivariate ecological regression analysis" endorsed by the Gingles plurality opinion. Thornburg v. Gingles, 478 U.S. 30, 52-53 (1986); J.A. at 115-21. The only election where racial bloc voting was found was one "exogenous" state judicial race (held not just in Bossier Parish), which obviously reflects

Two elections have been held under the redistricting plan adopted by the School Board. In 1994, two black candidates were elected to the School Board. Julian Darby was elected from district 10, which is only 26.7% black. J.A. 47. Vassie Richardson, who is also black, was elected from district 4, which is 45% black. In the interim period between elections, the School Board appointed Kenneth Wiggins, an African-American, to fill a vacancy in district 8 on the School Board. In the 1998 elections, Mr. Wiggins was challenged by a white Republican opponent. Even though Mr. Wiggins' district was only 21.1% black, he won re-election. See J.A. 47; Official Elections Results attached hereto at A4. Also, both Julian Darby and Vassie Richardson were again elected, this time without opposition. Id. at A8. As a result of these elections in which three black candidates have been elected to the School Board, it is now clear beyond a reasonable doubt that minorities have a meaningful opportunity to elect representatives of their choice in at least three districts under the School Board's plan. They also enjoy 25% (3/12) of the representation on the School Board in a parish with only 20.1% black population and 17.6% black voting age population. App. 79a. Inexplicably, appellants seek to undo this remarkable success story of racially nonpolarized voting and extra-proportional representation of black School Board officials and replace it with a plan where black voters are packed into two majority districts. Since such black majority districts are plainly not needed to provide black voters a viable opportunity to elect their preferred candidates and three blacks have been elected in whitemajority districts, there is absolutely no beneficial purpose

different voting patterns than those for local representative office. J.A. 113-15. See, e.g., Magnolia Bar Ass'n v. Lee, 994 F.2d 1143, 1149 (5th Cir.), cert. denied, 510 U.S. 994 (1993). Even in this single race, the "racial polarization" led to the black candidate receiving 35.7% of the vote in a parish with a 17.6% black voting age population, a positive difference of 18.1%. J.A. 57.

served by this racial gerrymander and its "clearly foreseeable effect" is to dilute black voting strength.

#### ARGUMENT

#### I. THIS APPEAL IS NONJUSTICIABLE UNDER ARTI-CLE III.

Appellants seek to have this Court opine on the legal validity of a six-year-old redistricting plan that will never again be used in any election. Article III prevents such an advisory opinion as appellants lack standing and the case is now moot. It has long been recognized that the "case-orcontroversy requirement [of Article III] subsists through all stages of federal judicial proceedings, trial and appellate." Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990). Accordingly, "the standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." Arizonans for Official English v. Arizona, 117 S. Ct. 1055, 1067 (1997) (citing Diamond v. Charles, 476 U.S. 54, 62 (1986)). Likewise, "Article III of the Constitution requires that there be a live case or controversy at the time that a federal court decides the case; it is not enough that there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing." Burke v. Barnes, 479 U.S. 361, 363 (1987) (citing Sosna v. Iowa, 419 U.S. 393, 402 (1975)). Therefore, Article III requires a case to be dismissed as moot "if an event occurs [pending review] that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." Church of Scientology v. United States, 506 U.S. 9, 12 (1992) (quoting Mills v. Green, 159 U.S. 651, 653 (1895)).

This Court lacks jurisdiction over this appeal because, regardless of whether the Court affirms or remands the lower court's declaratory judgment preclearing the Board's 1992 redistricting plan, that plan will never again be used for any purpose. One month after appellants filed their jurisdictional statements in this Court, the last election ever to be held

under the School Board's plan was conducted, and three black candidates were elected. The School Board's plan will never again be utilized because under Louisiana law, the next School Board election will not take place until 2002. LA R.S. 17:52. By that time, new federal decennial census data will be available, and thus the School Board will be required under this Court's one-person one-vote precedents to adopt a new apportionment plan. Accordingly, the current plan is already a dead letter. In the terms of Section 5, the voting "practice" at issue here will never again be "enforce[d]" by any official in Bossier Parish. 42 U.S.C. § 1973c.

The Court has held that Section 5 challenges to election procedures that have already been implemented and that will not be enforced in the future are moot. In Watkins v. Mabus. 502 U.S. 954 (1991), the Court considered whether "the preclearance requirements of Section 5 of the Voting Rights Act apply to the changes in the absentee ballot procedures adopted for the September 17 election. . . . " As the election had already occurred and the challenged procedure would not be utilized in the future, the Court held that "[t]he completion of the September 17 election has rendered this claim moot with regard to the relief sought, i.e., an order enjoining the September 17 election for failure to comply with preclearance requirements." 502 U.S. at 954-55. Likewise, in Hall v. Beals. 396 U.S. 45 (1969), the Court held that a suit for injunctive relief against a voter residency requirement was moot because the election had already taken place and the statute was no longer in effect.

As these cases reflect, there are two related jurisdictional bars to this Court's jurisdiction to entertain this appeal. First, neither party has any legally cognizable interest in these proceedings. As the parties "invoking federal jurisdiction," appellants "bear[] the burden" of establishing that they have a "legally protected interest." Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). See Arizonans, 117 S. Ct. at 1067; Diamond v. Charles, 476 U.S. 54, 62 (1986). It is clear that appellants, who seek only prospective relief, will not suffer

any injury in fact, let alone "actual or imminent" injury, under a plan that will never again be utilized and thus they have no standing to invoke this Court's jurisdiction. Lujan, 504 U.S. at 560 (internal quotations omitted). Moreover, this Court has made clear that "'[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.' "Lujan, 504 U.S. at 564 (quoting Los Angeles v. Lyons, 461 U.S. 95, 102 (1983) (internal quotations omitted)).

Indeed, if the case is remanded, the School Board, as plaintiff, will voluntarily dismiss its suit because the Board obviously has no interest in obtaining a ruling on the validity of a law that no longer has force or effect. This is a classic case where resolution of the legal issues presented will have no concrete effect on the parties. By contrast, in a typical Section 5 case, the requisite "controversy" exists because a covered jurisdiction has an interest in eradicating the presumptive injunction Section 5 imposes on all voting changes. No such interest obtains, however, where the voting practice in question will not be used even absent the presumptive injunction imposed by Section 5.

For essentially the same reason, the case is now moot. This Court has repeatedly held that Article III precludes review of laws that have expired and thus have no further force or effect. See, e.g., Burke, 479 U.S. at 363. Such cases are moot because where a party seeks injunctive relief and the law is no longer in effect, there is quite plainly no live case or controversy. Just so here, appellants' attempt to "prevent" the Board's redistricting plan from being used in any future election is of purely academic interest because the Board will not and cannot use the plan for voting purposes regardless of how the Court rules. See Lawyer v. Department of Justice, 117 S. Ct. 2186, 2194 (1997) ("'The real value of the judicial pronouncement – what makes it a proper judicial resolution of a "case or controversy" rather than an advisory opinion – is in the settling of some dispute which affects the behavior of the

defendant towards the plaintiff.") (quoting Hewitt v. Helms, 482 U.S. 755, 761 (1987)) (emphasis in original).

Stated somewhat differently, there is no relief that the Court can grant which will redress appellants' purported injuries. See, e.g., Oil, Chemical and Atomic Workers Int'l Union v. Missouri, 361 U.S. 363, 371 (1960); Northeastern Fla. Chapter of Associated Gen. Contractors v. Jacksonville, 508 U.S. 656, 669-70 (1993) (O'Connor, J., dissenting). Any relief entered in this action will have no effect: if a declaratory judgment issues, the School Board's plan will not be used for future elections; if a declaratory judgment does not issue, the School Board's plan will not be used in future elections. Preventing enforcement of a law that is already a nullity cannot redress any injury.

In this regard, it is important to recognize that this litigation cannot result in an order invalidating the 1998 elections and requiring that new elections be held. Rather, all that the district court could do on remand is withdraw its prior declaratory judgment, and therefore prospectively prohibit appellee from conducting future elections under this plan, a result that is already compelled. Such an order, however, would have no effect on the 1998 elections conducted pursuant to the preclearance order already issued, just as this Court's prior remand had no effect on the 1994 elections.

Moreover, although it is irrelevant to whether this case presents a live controversy, we further note that no other court could undo the 1998 elections for any alleged Section 5 violation. Rather, the local Section 5 district courts are sharply limited to addressing "[t]he only issue" over which they have jurisdiction, i.e., "whether a particular state enactment is subject to the provisions of the Voting Rights Act, and

<sup>6</sup> Needless to say, a redistricting plan with a life span of 8 to 10 years is not "capable of repetition, yet evading review." Morse v. Republican Party, 517 U.S. 186, 235 n.48 (1996) (Stevens, J.). Moreover, the Board has "disavowed" future use of the practice at issue here and no monetary payments have been made by appellants. Id.

therefore must be submitted for approval before enforcement." Allen v. State Bd. of Elections, 393 U.S. 544, 558-59 (1969). Thus, the local district courts may prospectively enjoin elections where the voting change has not been submitted and, as a corollary power in some circumstances, may order new elections where no such preclearance had been obtained prior to the election. See, e.g., Berry v. Doles, 438 U.S. 190 (1978). Here, however, the School Board elections in October of this year were held pursuant to a plan that had been submitted and precleared in conformance with Section 5.7 In light of this preclearance, the local law adopting the Board's redistricting plan is entitled to the same presumption of validity as any law not subject to Section 5's constraints and appellants did not seek to stay the D.C. district court's order to prevent the October elections. Particularly since the local district court has no authority to second-guess the validity of the preclearance order of the court below, it cannot undo the elections authorized by that court.8 Consequently, so far as we can discern, no Section 5 case has ever invalidated any election because it was based on a voting change that had been "erroneously" precleared by a court with jurisdiction prior to the election. As a practical matter, of course, no rational equity court would undo an election where three districts have just elected black candidates in order to substitute a plan providing black voters with an opportunity to elect two candidates of their choice

<sup>&</sup>lt;sup>7</sup> Specifically, the district court's order in this case stated that "plaintiff Bossier Parish School Board is given pre-clearance for its election plan adopted on October 1, 1992, and [] it shall have a declaratory judgment to that effect." Bossier Parish Sch. Bd. v. Reno, No. 94-01495 (D.D.C. May 1, 1998).

<sup>\*\*</sup> Allen v. State Bd. of Elections, 393 U.S. 544, 549-50 (1969) ("Once the State has successfully complied with § 5 approval requirements, private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality; there is no further remedy provided by § 5."); Lopez v. Monterey County, 117 S. Ct. 340, 349 (1997); Berry, 438 U.S. at 193 (Brennan, J., concurring).

In short, even if Article III permitted it, there is simply no practical reason to determine whether a six-year old redistricting plan that will never again be used and has resulted in the election of three black candidates was unlawful because it was allegedly "designed" to prevent the election of two black candidates. Given the dispositive nature of these threshold jurisdictional issues, this case does not warrant this Court's plenary review as no substantial federal questions are properly before the Court.

# II. THE DISTRICT COURT DID NOT RULE THAT SECTION 5 REACHES ONLY RETROGRESSIVE INTENT.

As they did in the first appeal in this case, the United States and private appellants seek to create a legal issue where none exists by misinterpreting the actual rationale of the court below. App. 10a (Silberman, J., concurring) ("[T]he government filings in the Supreme Court were deceptive."). In its first Bossier opinion, this Court expressly left "open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." App. 45a. Appellants maintain that the court below resolved this legal issue by holding that, as a matter of law, only retrogressive intent can violate Section 5 and, as a consequence, it did not address whether the Board possessed a discriminatory, albeit non-retrogressive, purpose. At the same time, however, appellants also contend that the court below expressly "declined" to resolve this legal issue that the Court had reserved. U.S. J.S. at 12: Appellant-Intervenors' Jurisdictional Statement ("Int. J.S.") at 14. Appellants have therefore simultaneously taken the inherently contradictory positions that the court below resolved the question of whether Section 5 reaches beyond retrogressive intent and that it declined to resolve the question of whether Section 5 reaches beyond retrogressive intent. The truth, however, is that the district court did decline to resolve this legal question. It did so because it was unnecessary to its decision since it had made the factual finding that there was no evidence "'that the Board enacted the [redistricting] plan with some non-retrogressive, but nevertheless discriminatory, "purpose." ' " App. 3a n.2 (quoting Bossier I, 117 S. Ct. at 1501).

First, the lower court established that it was fully aware that the Court had "left for another day the question" whether Section 5 prohibits actions taken with non-retrogressive discriminatory intent. App. 3a. It then "decline[d]" to "answer the question the Court left for another day" because "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." Id. (emphasis added). While the court could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose' "it found that "those imagined facts are not present here." App. 3a-4a (emphasis added).

Thus, the district court plainly stated that resolution of the question whether Section 5 prohibits a discriminatory, but non-retrogressive, purpose was unnecessary to decide this case because the facts supporting any such discriminatory purpose were "not present here." It did not hold, as appellants maintain, that if such discriminatory purpose were "present here," the Board would nonetheless be entitled to preclearance under Section 5 because that statute proscribes only "retrogressive" intent.

The rest of the court's analysis further confirms that it was analyzing the question of "non-retrogressive, but nevertheless discriminatory, 'purpose.' "First, it plainly stated that, as it had already ruled in Bossier I, the School Board had the "difficult[]" "burden to prove the absence of discriminatory intent." App. 5a. (First emphasis in original, second emphasis added). Next, the court analyzed the Board's reasons for adopting the Police Jury plan in preference to the NAACP plan, not whether the Board had adopted the Police Jury plan for the purpose of putting minorities in a worse position than they enjoyed under the Board's 1980 redistricting plan. Thus, it squarely held that "the school board's resort

to the pre-cleared Jury plan (which it mistakenly thought would easily be pre-cleared) and its focus on the fact that the Jury plan would not require precinct-splitting, while the NAACP plan would, were 'legitimate, nondiscriminatory, motives." Id. Again, then, the court was holding that the Board's "motives" for adopting the Jury plan in preference to the NAACP plan were "legitimate [and] non-discriminatory" because the Police Jury plan better furthered the race-neutral policy of preserving precincts than the NAACP plan. Comparing the relative virtues of the Police Jury plan and the maximizing alternative proposed by the NAACP makes no sense if the court were analyzing only whether the Board's purpose was to cause retrogression. For "[r]etrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." App. 35a (emphasis added). In contrast, the court below analyzed whether the Board adopted the Police Jury plan over the "alternative voting practice . . . benchmark" proposed by the NAACP for impermissible or "non-discriminatory" "motives." App. 4a, 5a. This is classic "discriminatory purpose" analysis used in all Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977), and employment cases - i.e., whether the minority applicant (or integrative alternative) was rejected for racial reasons or for "legitimate, nondiscriminatory reasons." Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 n.8 (1978).

Similarly, when the court analyzed the impact of the proposed plan under Arlington Heights and this Court's remand, the district court did not look only at "whether the Jury plan bears more heavily on blacks than the pre-existing plan." App. 5a. Rather, after disposing of private appellants' argument that the Jury plan had such a retrogressive effect, the court analyzed the other "allegedly dilutive impacts of the Jury plan" that appellants had offered "in support of its discriminatory intent argument." App. 6a (emphasis added). Of course, as the district court was well aware, this Court in Bossier I had used the term "dilutive impact[]" to denote a

black votes as compared to a "reasonable alternative voting ... benchmark" and in contradistinction to a plan which had a "retrogressive effect" because it diluted black votes more than the "existing plan." App. 37a, 35a. See App. 46a-47a. See also App. 10a-11a (Silberman, J., concurring). Thus, as instructed by this Court on remand, the district court was analyzing whether the choice of the allegedly "dilutive" alternative reflected a "discriminatory intent."

In this regard, the court found that the Board's plan could have reflected an impermissible purpose if it had "deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote" by, for example, "fail[ing] to respect communities of interest and cutting across attendance boundaries." App. 6a. In this case, however, it found "an absence of such evidence in this record" and thus the discriminatory purpose assertion to be "too theoretical, and too attenuated, to be probative." ld.9 Thus, the court correctly considered and rejected appellants' assertion that the Board had "split . . . minority neighborhoods that would have been grouped into a single district . . . if the [Board] had employed the same line-drawing standards in minority neighborhoods as it used elsewhere in the jurisdiction." Johnson v. DeGrandy, 512 U.S. 997, 1015 (1994). Examining such evidence of "fragmentation" is standard analysis in determining whether a jurisdiction was acting

<sup>&</sup>lt;sup>9</sup> To the contrary, as is demonstrated by the fact that the Police Jury plan was precleared after careful scrutiny by the Justice Department, the Board's plan kept intact any reasonable concentration of minority voters that was feasible under neutral principles and state law. In a parish with a 20.1% black population, this resulted in the creation of two districts with 45% and 43.7% black populations, respectively, and four districts with black populations of between 21% and 29%. J.A. 47. It merely did not seek, as the NAACP plan concededly did, to unite through a race-conscious gerrymander widely dispersed black concentrations that never would have been united were their racial composition different.

with the discriminatory purpose of intentionally diluting minority voting strength.

Finally, the district court opinion clearly stated that it was adhering to the same "method of analysis" as its "earlier" decision. App. 5a. The earlier decision plainly focused exclusively on whether the NAACP plan was rejected for impermissible racial reasons, but did not focus on retrogressive intent. App. 105a. The concurring opinion emphasized in this regard that the court was again analyzing whether " 'the School Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts." App. 9a (quoting App. 113a). It noted that it had both considered "dilutive impact" and applied the Arlingtor Heights framework in its first opinion contrary to appellants' representation to this Court in the first Bossier appeal. App. 10a. The concurrence then affirmatively stated that it engaged in such analysis again, while adding only that it was "now" dealing expressly with the Board's compliance with the outstanding school desegregation decree. App. 11a. Thus, the concurrence further confirms that the district court opinion was simply fleshing out its first discriminatory purpose analysis, and was not substituting some new legal standard that focused exclusively on retrogressive intent.

To be sure, the majority opinion adverts on several occasions to the Board's "retrogressive intent." App. 6a-7a. In context, however, this should not be read as indicating that the district court somehow had sub silentio made the legal determination that only retrogressive intent violates the purpose prong of Section 5. Rather, these statements must be read in conjunction with the district court's threshold decision that there was no evidence of "non-retrogressive, but nonetheless discriminatory, 'purpose,' " and its incorporation of its prior findings that the Board's "change was undertaken without a discriminatory purpose." See App. 105a. Given the absence of such discriminatory purpose evidence, the court below quite naturally sometimes phrased its conclusions in

terms of retrogressive intent. Since, in this opinion, the court had already found that rejection of the NAACP plan was done pursuant to "legitimate, non-discriminatory motives," it did not need to reiterate that finding when it was dealing with each of the separate pieces of the Arlington Heights evidence. This is particularly true since, when considering each of the Arlington Heights factors, it incorporated by reference the court's earlier decision – in which it plainly did find that the plan was not motivated by discriminatory intent. See App. 6a-7a. Finally, as noted, the court often stated its conclusions in terms of "discriminatory" purpose, not "retrogressive" purpose. App. 5a, App. 6a (appellants had failed "to rebut the non-discriminatory reasons advanced by the school board" for adopting its plan). 10

In short, it is quite implausible that the lower court would have resolved the legal question that this Court made clear was important and unsettled without discussing in any way the reasons for adopting this legal position. When coupled with the court's express refusal to resolve the legal question of Section 5's scope, the decision cannot reasonably be read as deciding that issue one way or another. At a minimum, this Court should not resolve that concededly unsettled legal issue in circumstances where it is, at best, ambiguously presented.

#### III. THE PURPOSE INQUIRY UNDER SECTION 5 OF THE VOTING RIGHTS ACT RELATES EXCLU-SIVELY TO RETROGRESSIVE INTENT.

If the Court concludes it has jurisdiction over a live "case or controversy" and decides to resolve the issue raised by appellants, the Court should affirm on the ground that the purpose inquiry under Section 5 of the Voting Rights Act relates exclusively to retrogressive intent. This conclusion is

<sup>&</sup>lt;sup>10</sup> Similarly, while the court did say that the Board's action reflected a "determination to maintain the status quo," it is unclear whether the status quo referred to was the previously enacted Police Jury plan or the Board's own 1980s redistricting plan. App. 7a.

mandated by the plain language of the statute, its purpose, and its structure.

It is a bedrock principle of this Court's statutory construction jurisprudence that "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete." " Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 254 (1992) (quoting Rubin v. United States, 449 U.S. 424, 430 (1981)). See also Robinson v. Shell Oil Co., 117 S. Ct. 843, 846 (1997) ("Our inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.") (quoting United States v. Ron Pair Enterprises, 489 U.S. 235, 240 (1989)); Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 475 (1992) ("[W]hen a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished."). The interpretation of the term "purpose" under Section 5 presents just such a case where the text of the statute resolves its meaning. Section 5 provides in pertinent part that a covered jurisdiction is entitled to a declaratory judgment authorizing a proposed voting change where the practice at issue "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . " 42 U.S.C. § 1973c. Under the statute then, preclearance will be denied if a proposed change has either (1) the "purpose . . . of denying or abridging the right to vote on account of race or color" or (2) "the effect of denying or abridging the right to vote on account of race or color." Significantly, it is agreed by all that a proposed change has the "effect of denying or abridging the right to vote" only if it has retrogressive effect on minority voters. See, e.g., App. 46a ("we have adhered to the view that the only 'effect' that violates § 5 is a retrogressive one."); City of Lockhart v. United States, 460 U.S. 125, 134 (1983); Beer v. United States, 425 U.S. 130, 141 (1975). Thus, the "purpose . . . of denying or abridging the right to vote" must also be understood to relate exclusively to retrogression.

A contrary conclusion can only be reached if one assumes that the phrase "denying or abridging the right to vote on account of race or color" has a different meaning as it relates to purpose and effect. Such an interpretation would be absurd, as no principle of common usage, grammar, or logic would suggest a solitary phrase modifying two objects in the same sentence could have a different meaning as to each noun. Not surprisingly, appellants have not cited to a single case where this Court has endorsed such a counterintuitive and anomalous method of construing a statute. If the phrase "abridging or denying the right to vote" refers to retrogression as it relates to the term "effect," it inexorably follows that it must have the same meaning as it applies to the term "purpose." See, e.g., BankAmerica Corp. v. United States, 462 U.S. 122, 129 (1983) ("[W]e reject as unreasonable the contention that Congress intended the phrase 'other than' to mean one thing when applied to 'banks' and another thing as applied to 'common carriers,' where the phrase 'other than' modifies both words in the same clause."); Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980).

Although resort to additional sources is unnecessary in light of the unambiguous meaning of the statute's plain language, the purpose of Section 5 confirms the foregoing conclusion. The Court has repeatedly held that the purpose of Section 5 was "to halt actual retrogression in minority voting strength. . . . " City of Lockhart, 460 U.S. at 133. Thus, in Lockhart, " '[s]ince the new plan did not increase the degree of discrimination against [the City's Mexican-American population], it was entitled to § 5 preclearance [because it was not retrogressive].' " App. 36a (quoting Lockhart, 460 U.S. at 134) (emphasis added). Likewise, in Beer, the Court elaborated: "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective franchise of the electoral franchise." 425 U.S. at 141. See also Lockhart, 460 U.S. at 134 ("the aim of Section 5 was to prohibit only retrogressive changes")

(emphasis added); City of Richmond v. United States, 422 U.S. 358, 388 (1975) (Brennan, J., dissenting) ("the fundamental objective of § 5 [is] the protection of present levels of voting effectiveness for the black population.") (emphasis in original). As this Court explained in its prior opinion, Congress achieved this "limited purpose" by "freezing election procedures in the covered areas'" and thereby prevented further retrogression in the voting rights of minorities. App. 34a (quoting Beer, 425 U.S. at 140) (internal citations omitted).

This view of the "limited purpose" of Section 5 is entirely consistent with, and in fact necessitated by, the structure of the statutory scheme. Although the provisions of the Voting Rights Act taken together certainly intended to "rid the country of racial discrimination in voting," South Carolina v. Katzenbach, 383 U.S. 301, 315 (1966), it was left to Section 2 of the statute to provide a remedy against existing forms of discrimination. By contrast, Section 5 was implicated only where a change in a voting practice or procedure was proposed by a covered jurisdiction. By specifically linking application of Section 5 to a change in a procedure, the statute necessarily assumes that Section 5 has no bearing on the perpetuation of existing practices, even if such practices are maintained for discriminatory purposes. Rather, Section 2 of the Voting Rights Act and the Constitution are the devices for stopping continued use of practices that were adopted for a discriminatory purpose. In short, the structure of the statute confirms what the text and purpose of Section 5 make clear: both the purpose and effect tests of this provision relate exclusively to retrogression.

The limited availability of Section 5 relief is dictated by the "severe" burdens that this provision places upon the states. Allen, 393 U.S. at 556. See also Katzenbach, 383 U.S. at 334 (noting the "exceptional conditions" that justified the utilization of such an "uncommon exercise of congressional power"); id. at 360 (Black, J., concurring and dissenting) (Section 5 represents "a radical degradation of state

power..."). Under Section 5, the normal heavy presumption of validity for state laws is reversed, and the state law is deemed presumptively unlawful until the state has demonstrated an absence of retrogressive purpose and effect. Cf. Parham v. Hughes, 441 U.S. 347, 351 (1979). Consequently, it has long been recognized that significant "federalism costs [are] already implicated by § 5 preclearance." App. 38a (citing Miller v. Johnson, 515 U.S. 900, 926 (1995)). Accordingly, it was entirely appropriate for Congress to have limited the reach of Section 5's presumptive injunctive effect to voting procedures that were motivated by a retrogressive intent or that had a retrogressive effect. This creates no risk that minorities will be subjected to plainly purposeful discrimination since such action will easily be prevented through Section 2 or constitutional challenges.

At bottom, appellants' attempt to refute the compelling evidence of the "limited purpose" of Section 5 stems from their belief that the Department of Justice should not preclear a plan that perpetuates "long-entrenched racial discrimination." U.S. J.S. at 20. But it is clear that Section 5 does plainly tolerate "continu[ing] in place a discriminatory status quo" since it reaches only alterations of that status quo. Id. at 25-26. Again, Section 2 and the Constitution deal with efforts to maintain discriminatory practices. Indeed, this Court in Bossier I rejected an almost identical argument, i.e., Section 5 simply must be interpreted to prohibit clear Section 2 violations because otherwise the Attorney General would be forced to preclear a change she believes is unlawfully discriminatory. App. 37a, 62a. Since it is fully consistent with Section 5's purpose and structure to conclude that the Attorney General has no authority to withhold preclearance for "clear violations" of Section 2, it is equally legitimate to conclude that she is without authority to deny preclearance for constitutional violations. So recognizing the "limited substantive goal" of Section 5 in no way "tolerates" unlawfully discriminatory practices, it simply recognizes that such practices

should be challenged under the laws which render them illegal.

In the face of the unambiguous text and plain purpose of the statute, appellants improperly seek to invoke the legislative history of the 1982 reenactment of Section 5 as support for the proposition that the statute extends well beyond the search for retrogressive intent. Specifically, appellants invoke a footnote in the 1982 Senate Report which, they claim, demonstrates that Congress understood that Section 5, as interpreted in Beer, prohibited changes with a discriminatory purpose. U.S. J.S. at 19 (citing S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982)). But this Court has already twice ruled that the Senate Report's understanding of Beer in no way controls the interpretation of Section 5 if, as here, that legislative history is in any way inconsistent with the statute's language and structure. First, relying on the very same Senate Report footnote offered by appellants, Justice Marshall argued in his Lockhart dissent that the 1982 Congress believed "that the rule laid down in Beer governed ameliorative changes," but did "not allow covered jurisdictions to adopt voting procedures which maintain existing discrimination." 460 U.S. at 145 (Marshall, J., dissenting) (emphasis in original). The Lockhart court nonetheless ruled that Section 5 permitted changes which either ameliorated or maintained the prior system because that result was required by the statute's language and structure. 460 U.S. at 134; App. 42a (describing Lockhart as "reaching its holding over Justice Marshall's dissent, which raised the argument now advanced by appellants regarding this passage in the Senate Report"). Similarly, in Bossier I, this Court ruled that the Senate Report's plain statement that Congress understood Beer to reach discriminatory "results" did not authorize a Section 5 objection to challenge such results. App. 42a. Thus, appellants' invocation of this very same footnote for the third time does not support their extra-textual interpretation of Section 5.

To be sure, "Beer's dictum suggests that any changes that violate" the Constitution also violate Section 5. App. 71a

(Stevens, J., dissenting in part and concurring in part). See also App. 39a (Beer "cited in dicta a few cases to illustrate when a redistricting plan might be found to be constitutionally offensive."). As an initial matter, of course, this dictum cannot alter the inexorable effect of the Section 5 statutory language. In any event, it is not at all clear that the Beer court believed that rejection of a proposed black-majority district(s) in a single-member redistricting scheme would constitute a constitutional violation, even if the rejection was motivated in part by racial concerns. Rather, although the law was unsettled because this Court had never struck down a single-member redistricting plan on constitutional grounds, the standard seemed to be that single-member redistricting schemes, as opposed to plans with multi-member districts, violated the Constitution only if they caused retrogression. Thus, in City of Mobile v. Bolden, 446 U.S. 55 (1980) - the case establishing the constitutional standard for vote dilution cases - the plurality noted that, under prior cases, a "districting statute otherwise acceptable, may be invalid because it fences out a racial group so as to deprive them of their preexisting municipal vote. Gomillion v. Lightfoot, 364 U.S. 339 (1960)." City of Mobile, 446 U.S. at 69 n.14 (quoting Gaffney v. Cummings, 412 U.S. 735, 751 (1973) (emphasis added)). In contrast, it noted that "multi-member districts" could be unconstitutional without such retrogression in minorities' "pre-existing . . . vote," if it were shown that at-large districts had been deliberately "employed to minimize or cancel out the voting strength of racial or political elements of the voting population." Id. (emphasis in original) (internal quotations and citations omitted). Thus, the Mobile plurality, and pre-Beer cases, seemed to strongly indicate that a singlemember districting plan could violate the Constitution only if it caused retrogression by taking away minorities' "theretofore enjoyed voting rights," but not by engaging in even a race-conscious failure to create a black majority district. City of Richmond v. United States, 422 U.S. 358, 378-79 (1975) (quoting Gomillion, 364 U.S. at 347) (emphasis added). See

also City of Mobile, 446 U.S. at 85 n.4 (Stevens, J., concurring) (same); id. at 94 ("[W]e must accept the choice to retain Mobile's commission form of government as constitutionally permissible even though that choice may well be the product of mixed motivation, some of which is invidious.").

This reading of Beer is buttressed by the fact that the opinion, in explaining the constitutional standard to which it referred, stated that it could not "rationally" be argued that the Constitution was violated because a Louisiana jurisdiction (with a long history of discrimination) maintained a redistricting scheme that "almost inevitably would have the effect of diluting the maximum potential impact of the Negro vote." Beer, 425 U.S. at 142 n.14, 136. See also id. at 142 n.14 (the challenged redistricting plan "does not remotely approach a violation of the constitutional standards enunciated in those cases"). Obviously, if intentionally perpetuating a discriminatory redistricting system did constitute a constitutional violation, it certainly could be reasonably asserted that the New Orleans redistricting plan violated that standard. Moreover, in 1976 it was not at all clear that the rejection of a black majority district constituted vote dilution since creating such a district "necessarily decreases the level of minority influence in surrounding districts, and to that extent 'dilutes' the vote of minority voters in those other districts, and perhaps dilutes the influence of the minority group as a whole." App. 52a (Thomas, J., concurring). The Court had explicitly noted that it was not possible to determine whether the absence or presence of minority-majority districts diluted minority votes in Wright v. Rockefeller, 376 U.S. 52 (1964), the only case prior to Beer involving a single-member redistricting scheme: "Undoubtedly some of these voters . . . would prefer a more even distribution of minority groups among the four congressional districts, but others . . . would argue strenuously that the kind of districts for which appellants contended would be undesirable and, because based on race or place of origin, would themselves be unconstitutional." Id. at 57-58.

More generally, of course, it was not at all settled when Beer was decided in 1976 that the Constitution embodied a "discriminatory purpose" standard, particularly in the vote dilution area. See App. 39a; City of Mobile, 446 U.S. at 62, 66 (plurality opinion); id. at 85-86, 88-90 (Stevens, J., concurring); id. at 120 (Brennan, J., dissenting) ("Our vote-dilution decisions, then, involve the fundamental-interest branch, rather than the anti-discrimination branch, of our jurisprudence under the Equal Protection Clause."). Moreover, it remains unclear to this day whether the Fifteenth Amendment - the constitutional provision most closely mirroring the language of Section 5 - even reaches an intentionally discriminatory vote dilution claim. See Voinovich v. Quilter, 507 U.S. 146, 159 (1993) ("This Court has not decided whether the Fifteenth Amendment applies to vote-dilution claims. . . . "); App. 58a and cases cited therein.

In light of all this, it simply cannot be reliably inferred that the Beer Court's reference in dicta to the constitutional standard denoted a discriminatory, albeit non-retrogressive, purpose - even assuming that the Court's dicta could expand the scope of Section 5 to invalidate changes not violated by Section 5 itself. In addition, Beer dealt with a situation where the jurisdiction was seeking preclearance of the redistricting plan for the first time after Section 5 was enacted in 1965. In the early 1970s, a conscious effort to maintain the status quo would very often perpetuate a racially discriminatory system of the sort that the Voting Rights Act was designed to eradicate. Here, in contrast, the Board's pre-existing 1980 redistricting plan was affirmatively found by the Attorney General to be free of any discriminatory purpose or effect. (Moreover, of course, the Board's plan mirrored precisely a plan the Attorney General had found free of discriminatory purpose and effect just one year before, when the Police Jury plan had been precleared.) Since maintenance of a non-discriminatory system cannot, under ordinary English usage, perpetuate a discriminatory system, a non-retrogressive plan will almost

never be "discriminatory" absent a retreat from the previously precleared system.

The rest of the cases cited by appellants can be disposed of summarily. Appellees' assertion that the Court has previously resolved the question of whether Section 5 reaches beyond retrogressive intent is obviously belied by the fact that the Bossier I court reserved this unsettled question. App. 45a-46a. Nor did either of the concurring opinions maintain that the Court's precedent required such a rule. App. 61a, 70a, 76a. 11

The case upon which appellants primarily rely, City of Pleasant Grove v. United States, 479 U.S. 462 (1987), drew no distinction between retrogressive and discriminatory purpose and the result in that case had nothing to do with this distinction. In Pleasant Grove, the Court considered a covered jurisdiction's annexation of a parcel of land inhabited only by whites and an uninhabited parcel that was "intended for white developments." Id. at 468. Although the present retrogressive effect of these annexations was de minimis, the Court stated that Section 5 reached "future effects" and that "an impermissible purpose under § 5 may relate to anticipated as well as present circumstances." Id. at 471-72. The issue in

<sup>11</sup> The court's summary affirmance in Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983), is of little moment since summary affirmances are of slight precedential value. See, e.g., Ashland Oil, Inc. v. Caryl, 497 U.S. 916, 920 n.\* (1990). In any event, that decision is entirely consistent with the opinion below since the primary flaw in Busbee was that the submitting jurisdiction had "split a cohesive black community in Districts 4 and 5" thus causing minor retrogression in District 4, albeit not in District 5. Busbee, 549 F. Supp. at 499. See id. at 498. As noted, the court below considered and rejected the notion that the Board had split or "fragmented" any cohesive black community. In Miller v. Johnson, 515 U.S. 900 (1995), the Court overturned the Justice Department's finding of discriminatory purpose as inconsistent with any understanding of that term and thus, as in Bossier I, resolution of the som of purpose proscribed by Section 5 was "not necessary to [the court's] decision." App. 45a.

Pleasant Grove, therefore, was simply whether Section 5 reached anticipated circumstances, as well as present circumstances, but it drew no distinction between "discriminatory purpose" and "retrogressive purpose." Just as an annexation of land currently populated by whites alone could make minority voters worse off than they were prior to the annexation (i.e. retrogression), so too could annexing land that it was anticipated would be populated by whites. Indeed, the district court opinion faithfully tracked Pleasant Grove's distinction between future and present harm. Thus, the court found that Section 5's purpose prong would have been violated if there had been "any corroborating evidence that the School Board had deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote." App. 6a (emphasis added). Thus, whatever the rationale of Pleasant Grove, it is in no way inconsistent with the court below's reasoning or result.12

Finally, although appellants insinuate that the district court's factual findings are "unsupported," U.S. J.S. at 24, this issue is not present here because, unlike their first appeal,

<sup>12</sup> Likewise, the Court's decision in City of Richmond lends no support to appellants' interpretation of Section 5. There, the Court upheld an annexation that severely reduced the black population's pre-existing voting strength notwithstanding this undisputed retrogressive effect. 422 U.S. at 378. The Court then remanded the case to ensure that the motivation behind the annexation was not to cause such obvious retrogression in black voting strength, but was done for "verifiable, legitimate reasons." City of Richmond, 422 U.S. at 375. In doing so, the Court again equated "changes taken with the purpose of denying the vote on the grounds of race or color" with " 'despoil[ing] colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." Id. at 378-79 (quoting Gomillion, 364 U.S. at 347) (emphasis added). Thus, Richmond merely holds that an indisputably retrogressive change, which might otherwise survive Section 5 review, will be struck down if the motive in undertaking the annexation was to cause such retrogression, rather than to accomplish some "legitimate" goal. It in no way suggests that a non-retrogressive change may be invalidated if motivated by a nonretrogressive purpose.

appellants have not contended that the district court's factual findings are "clearly erroneous." In any event, the district court's factual finding as to a lack of discriminatory intent is, at the very least, "plausible" and thus must be upheld under Fed. R. Civ. P. 52(a). Anderson v. City of Bessemer, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

#### CONCLUSION

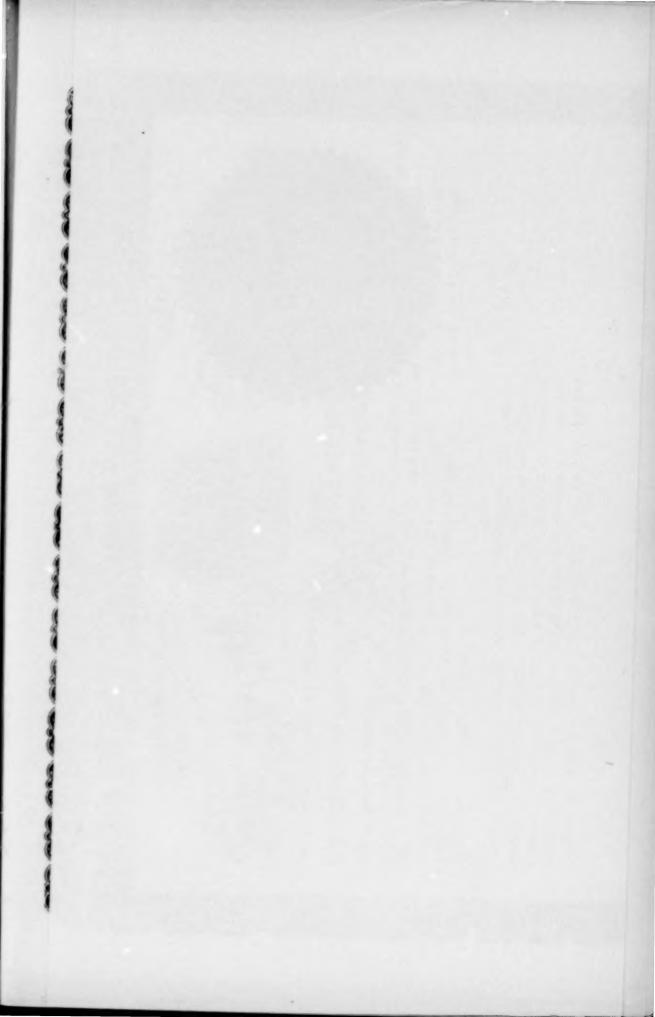
For the foregoing reasons, the Court should dismiss the appeal or summarily affirm the judgment of the court below.

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Fox McKeithen

SECRETARY OF STATE

that As Secretary of State, of the State of Louisiana, I do hereby Certify the attached five (5) pages are true and correct copies of the Precinct by Precinct Returns for the following listed offices for the primary election scheduled and held on October 3, 1998, as per the originals on file in the As Becretary of State, of archives of this office.

Bossier Bossier Bossier of Bossier Bossier of of of Parish Parish Parish Parish Parish 2, 4, 9, 9, 5, District District District District District Member of School Board, Board, Board, Board, of School Board, of School of School School of Member Member Member

to be affixed at the City of Balon Rouge on, my hand and caused the Seal of my Office

the 3rd day this



Secretary of State



ELCRPT6	ELECTION	LA SECRETARY RETURNS FOR EL	RY OF STA	TE DATE 10/03/98	86/		12/03/98 PAGE: 1
OFFICE: Member of School PARISH: Bossier		Board District (One to be E	rict 2 be Elected)				
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4- 11B	106	85	0	0	0	0	00
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OFFICE: Member PARISH: Bossier	Member of School Bo Bossier	Board District	rict 9 be Elected)				
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Precinct Number							
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2- 13	35	67	0	0	0	0	
	51	61	0	0	0	0	
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	24	31	0	0	0	0	
Su	191	314	0	0	0	0	
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Grand Total	38.15%	321	000.	000.	0 %00.	*000.	\$00.
CANDIDATE LEGEND 1 Barnett	Q		"Brad"			38	



SECRETARY OF STATE

the State of Louisiana, I do hereby Certify that candidates for the following listed offices for the primary election scheduled and held on October 3, 1998, as per the originals on file in the archives of the attached one (1) page is a true and correct copy of a list of unopposed As Secretary of State, of this office.

Bossier Bossier Bossier Bossier Bossier Bossier Bossier Parish of of of of Jo Parish Parish Parish Parish Parish Parish 4006 10, District District District District District District District School Board, Board, Board, Board, Board, Board, Board, School School School School School School of of of of of Member Member Member Member Member Member Member

In testimony whereof. I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

this the 7th day of December, A.D., 1998.

Jan William



Becretary of Hale



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Nos. 98-405, 98-406

FILED

DEC 29 1998

OFFICE OF THE CLERK

IN THE

## Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, ET AL.,

Appellants,

V.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

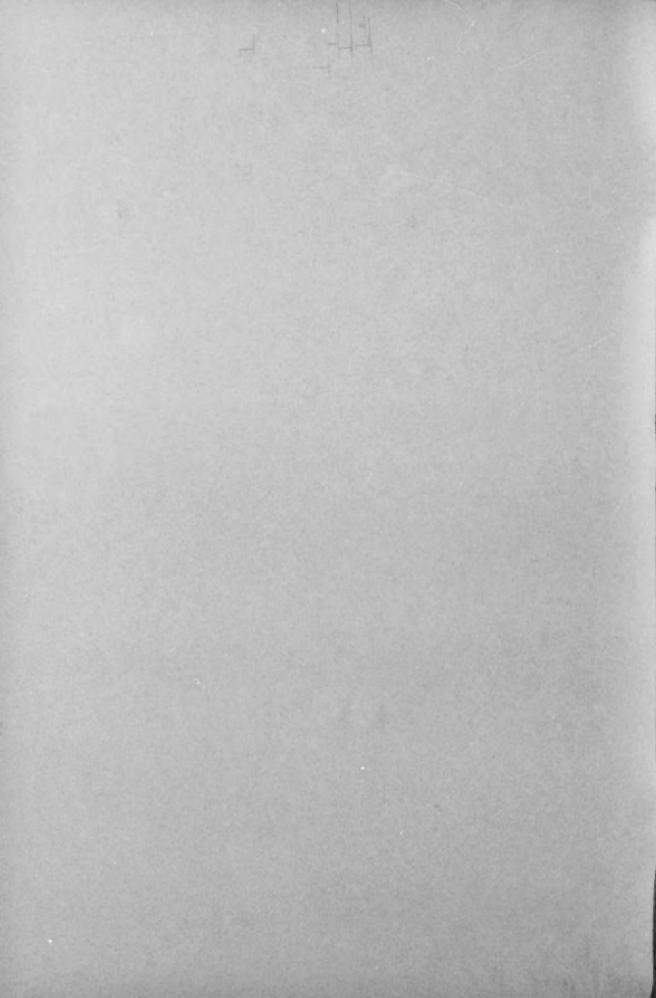
On Appeal from the United States District Court for the District of Columbia

## BRIEF OF GEORGE PRICE, ET AL., OPPOSING MOTION TO DISMISS OR AFFIRM

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#### INTRODUCTION

The Motion to Dismiss or Affirm ("Motion") presents this Court with two telling contradictions. In part I of the Motion, the Bossier Parish School Board ("School Board") urges the Court to decline review of the merits of the decision below on grounds that it is moot, because there has been a general election for the School Board since the decision below using the precleared election plan. The School Board fails to acknowledge that there are legal and practical uses that will be made of the plan. Moreover, the School Board fails to face the consequence of a declaration of mootness at this stage of the proceedings: reversing or vacating of the judgment below.

With respect to parts II and III of the Motion, the School Board argues in part III that the correct legal standard for review of whether an election plan was adopted with the "purpose" of denying or abridging the right to vote on account of race or color "relates exclusively to retrogressive intent" on minority voters. Motion at 19. Yet the School Board argues in part II of its Motion that the three-judge court applied a different standard: Whether the election plan was infected with "non-retrogressive, but nevertheless discriminatory, 'purpose." Motion at 15. The School Board thus is trying to shield from appellate review a judgment that it believes evaluated the evidence under the wrong legal standard.

The confusion in the School Board's arguments highlights the importance of this Court's consideration of the decision below on the merits in order to confirm that the purpose prong of Section 5 forbids the implementation of an election change adopted with a racially discriminatory intent whether or not it is retrogressive.

A. This Appeal Is Not Moot Because, If the Decision Below Is Left Undisturbed, the School Board's Redistricting Plan Will Be Used in Any Special Election and To Form the Baseline for Retrogression Analysis in Redistricting After the Year 2000.

The School Board argues that this appeal is moot because its 1992 redistricting plan will "never again be used for any purpose," Motion at 9, and thus no further judicial consideration of the plan is consistent with the "case or controversy" requirement of Article III. The School Board cannot assure this Court that the election plan will "never" be used again.

First, the plan precleared below remains in effect regardless of the passage of the 1998 general election. Although the next scheduled School Board election will not be held until 2002, Louisiana law provides that a special election will be held to fill any vacancy on the School Board which may arise prior to the next scheduled election. LA. R.S. 18:402 (E). On a 12-member school board, the likelihood of at least one vacancy arising due to death, resignation, or other reasons over the course of a four-year term is high. In the event of a special election, the plan precleared by the court below would be used by the School Board, since the terms of that plan are not limited to the 1998 election or to regularly scheduled elections. accordingly is different from Watkins v. Mabus, 502 U.S. 954 (1991) and Hall v. Beals, 396 U.S. 45 (1969), in which the election change at issue was no longer in effect and the election had taken place.

Second, whether the election plan remains valid has important legal consequences and is not "of purely academic interest." Motion at 11. When the School Board adopts a new election plan after the Year 2000 Census, as the School Board pledges to do, Motion at 2, the existing plan will be the benchmark against which a new plan is compared to

determine if it will have the "effect of [denying] or abridging the right to vote on account of race or color," as provided in Section 5. This Court has explained in this case that "[r]etrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." App. 35a. 1/1 If the preclearance decision is reversed by this Court, a different plan will be used as the benchmark: a new plan, if such a plan is precleared, or the 1980s School Board election plan. This alone creates a significant live controversy.

Finally, this appeal is not moot because equitable relief may be appropriate if the plan precleared below ultimately is found not to satisfy Section 5. See Clark v. Roemer, 500 U.S. 646, 660 (1991) (explaining that a "District Court should adopt a remedy [for a violation of Section 5] that in all circumstances of the case implements the mandate of § 5 in the most equitable and practicable manner"). If it is ultimately determined that the plan does not comply with Section 5, the Attorney General or the defendant-intervenors could seek relief such as voiding the election or an order for a special election under a proper plan. See Clark, 500 U.S. at 660; NAACP v. Hampton County Election Comm'n, 470 U.S. 166, 182-83 (1985), Berry v. Doles, 438 U.S. 190, 192-93 (1978).To find this appeal moot, thereby allowing a discriminatory plan to remain in effect and depriving its victims of any remedy, would be to do precisely "what § 5 was designed to forbid: allow the burdens of litigation and delay to operate in favor of the perpetrators and against the victims of possibly racially discriminatory practices." Berry, 438 U.S. at 194 (Brennan, J., concurring).

The School Board should not be heard to complain that the case is moot, in an effort to protect the decision

<sup>1/ &</sup>quot;App." references are to the Appendix to the Jurisdictional Statement filed on behalf of Janet Reno in No. 98-405.

below, but to foreclose appellate review sought in this Court. "[W]hen a civil case becomes moot pending appellate adjudication, 'the established practice in the federal system is to reverse or vacate the judgment below and remand with a direction to dismiss." Arizonans for Official English v. Arizona, 117 S. Ct. 1055, 1058 (1997) (quoting United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950)); see Watkins v. Mabus, 502 U.S. 954 (1991); Burke v. Barnes, 479 U.S. 361 (1987). If the School Board were correct that it would never use the plan again and the case were moot, the judgment below should be vacated and the case remanded with instructions to dismiss. Because the plan will be used, however, this Court should reach the merits of whether the district court on remand from this Court applied the appropriate legal standard to the evidence.

#### B. The Record Below Does Not Include Election Results Under the Plan.

After accusing the appellants of "gross factual distortions," Motion at 2, the School Board fails to identify any basis for such invective. Instead, the School Board uses its Counterstatement to argue that two elections held under the School Board's redistricting plan prove that the plan is not infected with discriminatory purpose. 2/ The School Board

The School Board also seems to contend that because new precincts would have been required to formulate a School Board election plan that respected minority voting strength, use of the Police Jury plan must be automa 'ally precleared for the School Board. The School Board's heavy emphasis on the "precinct splitting" issue is curious, because the district court had before it extensive stipulations of the parties on the timing and methods allowed for the creation of precincts in Louisiana. The School Board's contention that timing made it "impossible" for the Police Jury to establish new precincts to accommodate a different School Board redistricting plan, Motion at 4, is not supported by the record and is raised for the first time in the Motion. See Appendix to the Jurisdictional Statement in Nos. 95-1455 and 95-1508 at 69a-73a.

seeks to have this Court take "judicial notice" of the results of two sets of school board elections: the 1994 and 1998 elections. See Motion at 8. This Court, however, already has rejected in this case an effort by the School Board to inject into the record election results that post-date the adoption of the plan.

In March of 1996, the School Board filed in the earlier proceeding in this Court, Numbers 95-1455 and 95-1508, a Motion to Supplement Record attempting to bring to the Court's attention election results from earlier that month. The Court denied the motion. Reno v. Bossier Parish School Board, 517 U.S. 1154 (1996). On remand from this Court's decision in Numbers 95-1455 and 95-1508, the district court asked "whether the record needs to be reopened and whether, on what issues, and on what schedule additional briefs should be filed." Order dated August 13, 1997 in CA No. 94-1495. The parties agreed that the record should not be opened, 3/however, and the district court concluded "that there is no need to reopen the evidentiary record. . . ." Order dated Sept. 9, 1997 in CA No. 94-1495.

The 1998 election results that the School Board argues are virtually dispositive never have been analyzed in any way or presented to the district court. The election took place on October 3, 1998, after the filing of the Jurisdictional Statements in this matter on September 4, 1998.

It would be unfair and highly irregular for the Court to take "judicial notice" on appeal of the results of elections held while these proceedings are still in progress. The judgment of the district court should be reviewed based on the evidence of record when the judgment was rendered. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 235 (1990); Witters v. Washington Dep't of Servs. for the Blind, 474 U.S.

<sup>3/</sup> See Memorandum of Defendant-Intervenors George Price, et al., Concerning Remand Issues, at 1-2 (Sept. 5, 1997).

481, 486 n.3 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 n.16 (1970); Russell v. Southard, 53 U.S. 139 (1851); Boone v. Chiles, 35 U.S. (10 Pet.) 177, 208 (1836). That is the only way for an appellate court to review properly the election decisions of public officials; those officials did not have the later election results before them when they adopted the districting plan in question. See Bush v. Vera, 517 U.S. 952, 971 n.\* (1996); Ruiz v. City of Santa Maria, 160 F.3d 543, 548 n.13 (9th Cir. 1998). This is particularly true where, as here, the pending litigation itself may have had an impact on the election. See, e.g., Thornburg v. Gingles, 478 U.S. 30, 76 (1986); Clark v. Calhoun County., 21 F.3d 92, 96 (5th Cir. 1994).

The School Board's contention that "appellate courts have routinely taken judicial notice of post-trial elections in voting rights cases," Motion at 7 n. 4, is not even supported by the cases cited. Southern Christian Leadership Conference of Ala. v. Sessions, 56 F.3d 1281, 1288 n.13 (11th Cir. 1995), cert. denied, 516 U.S. 1045 (1996) and Westwego Citizens for Better Gov't v. City of Westwego, 906 F.2d 1042, 1045 (5th Cir. 1990) do not allow judicial notice by appellate tribunals of post-trial election results. Southern Christian Leadership Conference, the Eleventh Circuit, in the course of reviewing a district court decision upholding Alabama's at-large election of trial judges, took judicial notice that one black judge had retired since the district court decision. Southern Christian Leadership Conference, 56 F.3d at 1287-88. The judge's retirement did not speak to the district court's analysis of electoral systems, did not impact the appellate court's review, and had nothing to do with a post-trial election. Id. at 1287-88. In Westwego Citizens, the Fifth Circuit did not take judicial notice of anything. There, the court reviewed a district court decision dismissing a challenge to Westwego's at-large election of aldermen. Westwego Citizens, 906 F.2d at 1042-43. The

Fifth Circuit remanded the case to the district court twice, id. at 1042-44, and held that the district court erred in failing to consider evidence of a subsequent election on the first remand. Id. at 1042. The court remanded the case again, and ordered the district court to hear evidence of subsequent elections. Id.

The School Board has not even sought leave to bring the election results into this record. Leave would be inappropriate in any event. As the Court has done before in this case and others, it should disregard election results after the redistricting decision at issue because they have no relevance to the School Board's "purpose" under Section 5 when it adopted the districting plan.

C. The District Court Failed To Assess the
Evidence Under the Legal Standard for
Weighing Discriminatory Intent Set Forth by
This Court in Arlington Heights; Its More
Restrictive Standard of Retrogressive Intent Is
Not Appropriate Under Section 5.

The district court identified the legal standard it used to evaluate whether the School Board had demonstrated the lack of "purpose" to deny or abridge the right to vote on account of race or color in its districting plan: "The question we will answer. . . is whether the record disproves Bossier Parish's retrogressive intent in adopting the Jury plan." App. 4a. The School Board tries mightily to cast the district court's analysis of discriminatory intent as the type delineated by this Court in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977). Motion at 14 - 19. That possibility is contradicted by the district court's own repeated references to "retrogressive intent" as the measure for evaluating specific categories of evidence. Those references were reviewed at pages 16 - 17 of our Jurisdictional Statement, so will not be repeated here.

There is something very new about the School Board's argument in its Motion: For the first time, after extensive evidentiary proceedings in the district court, review by this Court, and remand proceedings before the district court, it argues that "retrogressive intent" is the proper standard for evaluating whether the districting plan is infected with a "purpose" to deny or abridge the right to vote on account of race within the meaning of Section 5.

The principal Supreme Court cases cited in part III of the School Board's Motion undercut its argument that "intent to retrogress" is the only form of intent outlawed by Section 5. The School Board bases much of its argument on the original case holding that retrogression is the only effect covered by Section 5. Beer v. United States, 425 U.S. 130, 141 (1976). The Beer Court acknowledged, however, that retrogressive effects are not the only denial or abridgment of the right to vote on account of race or color that Section 5 addresses:

We conclude, therefore, that such an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution.

Beer, 425 U.S. at 141 (emphasis added). Of course, one way to discriminate on the basis of race is to act with a discriminatory intent:

An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute.

City of Richmond v. United States, 422 U.S. 358, 378-79 (1975) (emphasis added). Richmond's purpose, as found by the lower court, was "perpetuating white majority power to exclude Negroes from office through at-large elections." 422

U.S. at 373. See also Hunter v. Underwood, 471 U.S. 222 (1985).

In Pleasant Grove v. United States, 479 U.S. 462 (1987), the Court said that the City's purpose was "perpetuat[ing] Pleasant Grove as an enlarged enclave of white voters." 479 U.S. at 470 (emphasis added). Since the City had only two black voters out of a total population of 7,000, the black voting strength at the time of the decision was effectively zero. Given that state of affairs it is hard to see how the School Board can argue that Pleasant Grove was proposing to retrogress from its then-current status of blacks lacking any voting power. This Court explained that "[t]he failure to annex black areas while simultaneously annexing nonblack areas is highly significant in demonstrating that the [City's] annexations were purposefully designed to perpetuate [Pleasant Grove] as an enlarged enclave of white voters." Id. A purpose to stop or counteract the growth in black voting strength is not a retrogressive purpose but an intent to maintain the status quo - a status quo in which whites hold the power.

The novelty of the School Board's argument is underscored by its earlier, consistent position that retrogressive intent was not the only "purpose" covered by Section 5. This Court confirmed the agreement of the parties on that issue at oral argument in 1996:

QUESTION: Well, what is your position here? Is it your position here that the only purpose that is relevant under Section 5 is purpose to cause retrogression, as distinct from purpose to discriminate by effecting a purposeful dilution?

MR. CARVIN: Oh, no. No, not at all. I think that decision, the Court's decision in Richmond and Pleasant Grove has already decided that issue and, indeed, since it was stipulated that it didn't even have the effect of retrogression, you can obviously

assume they didn't have the purpose to retrogress, and this would have been a one-paragraph opinion.

QUESTION: But there could have been a purpose to dilute.

MR. CARVIN: Yes. That's the whole point.

Reno v. Bossier Parish Sch. Bd., Transcript of Oral Argument, Dec. 9, 1996, 1996 WL 718469 at \*30-\*31. The Price appellants agree with the position taken by the School Board in 1996.

#### CONCLUSION

For all of these reasons, and those described in the Jurisdictional Statements, we submit that the Court should note probable jurisdiction.

Respectfully submitted,

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MAR 5 1999

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, ET AL.,

Appellants,

V.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the
United States District Court for the District of Columbia

#### BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

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#### **QUESTION PRESENTED**

Whether a redistricting plan submitted to the United States District Court for the District of Columbia under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, for a declaration that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color," should be precleared even if infected with an unconstitutional, racially discriminatory purpose that is not retrogressive?

#### PARTIES TO THE PROCEEDINGS

The Defendant-Intervenors below, Appellants George Price, et al., who are not listed in the caption are:

Leroy Harry
Thelma Harry
Clifford Doss
Odis Easter
Jerry Hawkins
Barbara Stevens King
Hurie Jones
Grover Cleveland Jaggers
Floyd Marshall
Rubie Fowler

All other parties are named in the caption.

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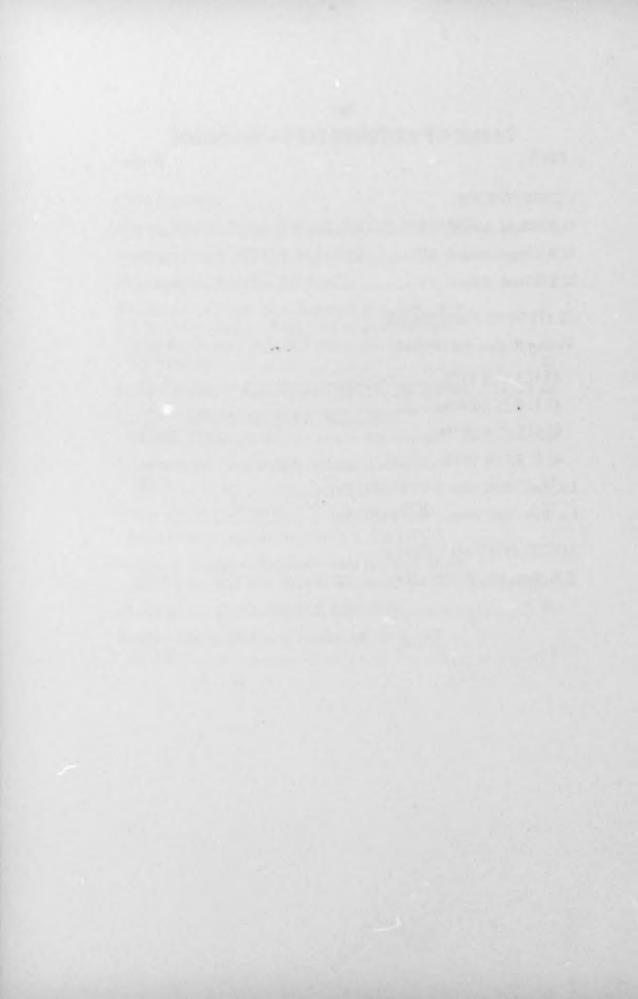
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#### IN THE

# Supreme Court of the United States

OCTOBER TERM, 1998

Nos. 98-405 & 98-406

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, ET AL.,

Appellants,

V.

Bossier Parish School Board,

Appellee.

On Appeal from the United States District Court for the District of Columbia

BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

#### **OPINIONS BELOW**

The decision of the United States District Court for the District of Columbia ("D.C. District Court") that is the subject of these appeals is reported at 7 F. Supp. 2d 29

(D.D.C. 1998) and is reprinted at App. 1a-28a. An earlier decision of the D.C. District Court in this case is reported at 907 F. Supp. 434 (D.D.C. 1995) (App. 78a-144a); this Court's decision vacating and remanding that earlier decision is reported at 117 S. Ct. 1491 (1997) (App. 29a-77a).

#### JURISDICTION

The D.C. District Court had jurisdiction pursuant to 42 U.S.C. § 1973c. It entered the judgment at issue on May 4, 1998. George Price, et al., and Janet Reno filed timely notices of appeal on July 6, 1998 and filed timely jurisdictional statements on September 4, 1998. This Court noted probable jurisdiction on January 22, 1999. This Court's jurisdiction is based on 42 U.S.C. § 1973c.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Section 1 of the Fifteenth Amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, is reprinted at App. 244a-246a.

#### **STATEMENT**

Because the Bossier Parish School Board ("Board") is a jurisdiction subject to the preclearance requirements of §5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, it is required to obtain the approval either of the Attorney General of the United States or of the D.C. District Court before implementing any changes to a "voting qualification or

Citations to "App." refer to the separately bound appendix to the Jurisdictional Statement filed on behalf of Janet Reno in No. 98-405. Citations to "J.A." refer to the Joint Appendix filed on March 5, 1999.

prerequisite to voting, or standard, practice, or procedure." App. 244a. Because the 1990 census revealed wide population disparities among its election districts, the Board proceeded to redraw its election districts to meet the mandate of this Court's one-person — one-vote decisions. *Id.* at 30a. The Board seeks in this declaratory judgment action a determination that its redistricting plan adopted following the 1990 census "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (App. 245a).

This is the second time that the Court has noted probable jurisdiction in this case. In 1997, this Court vacated and remanded the first judgment of the D.C. District Court preclearing the Board's proposed redistricting plan. Although the D.C. District Court found on remand "powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts" and a "tenacious determination to maintain the status quo," in which all election districts were majority white, App. 7a, it once again precleared the 12-of-12 majority white election district plan.

# A. This Court's Decision Vacating and Remanding the First Declaratory Judgment.

This Court decided two questions in its review of the D.C. District Court's first judgment granting preclearance of the Board's proposed redistricting plan:

- (i) whether preclearance must be denied under § 5 whenever a covered jurisdiction's new voting "standard, practice, or procedure" violates § 2 [of the Voting Rights Act]; and
- (ii) whether evidence that a new "standard, practice, or procedure" has a dilutive impact is always irrelevant to the inquiry whether the covered jurisdiction acted with "the purpose . . . of denying or abridging the right to vote on account of race or color" under § 5.

The Court first reviewed the Board's process of redistricting following the 1990 census:

[The Board] considered, and initially rejected, the redistricting plan that had been recently adopted by the Bossier Parish Police Jury, the parish's primary governing body (the Jury plan), to govern its own elections. Just months before, the Attorney General had precleared the Jury plan, which also contained 12 (Stipulations, ¶68). None of the 12 districts in the Board's existing plan or in the Jury plan contained a majority of black residents. . . . (Stipulations, ¶82) (under 1990 population statistics in the Board's existing districts, the three districts with highest black concentrations contain 46.63%, 43.79%, and 30.13% black residents, respectively); ... (Stipulations, ¶ 59) (population statistics for Jury plan, with none of the plan's 12 districts containing a black majority). Because the Board's adoption of the Jury plan would have maintained the status quo regarding the number of blackmajority districts, the parties stipulated that the Jury plan was not "retrogressive."... (Stipulations, ¶ 252). ... Appellant George Price, president of the local chapter of the NAACP, presented the Board with a second option a plan that created two districts each containing not only a majority of black residents, but a majority of voting-age black residents. . . (Stipulations, ¶98). Over vocal opposition from local residents, black and white alike, the Board voted to adopt the Jury plan as its own.

App. 30a-31a (citations omitted).

The Court recounted that the Attorney General rejected the Board's proposed redistricting plan when it was submitted for preclearance, on grounds that it would violate § 2 of the Voting Rights Act, 42 U.S.C. § 1973, "because it 'unnecessarily limit[ed] the opportunity for minority voters to elect their candidates of choice." App. 32a. The Attorney General had concluded that black residents are sufficiently numerous and geographically compact to form a majority in two of the 12 election districts. *Id.* at 31a-32a.

While the Court concluded that a voting change should not automatically be denied preclearance under § 5 of the Voting Rights Act, because the change would violate § 2 of the Act, App. 33a-45a, it held that evidence of minority vote dilution should not be excluded in a § 5 preclearance proceeding. A remand was necessary because it was not clear whether the District Court considered proffered evidence that would be relevant to a § 2 claim in order to determine whether the redistricting plan has the "purpose ... of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (App. 45a-51a).

The Court commended to the D.C. District Court on remand the factors relevant to determining discriminatory intent for purposes of Fourteenth Amendment analysis, outlined in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265 (1977):

"important starting point" for assessing discriminatory intent under Arlington Heights is "the impact of the official action whether it 'bears more heavily on one race than another." 429 U.S., at 266 (citing Washington v. Davis, 426 U.S. 229, 242 (1976)). In a § 5 case, "impact" might include a plan's retrogressive effect and, for the reasons discussed above, its dilutive impact. Other considerations relevant to the purpose inquiry include, among other things, "the historical background of the [jurisdiction's] decision"; "[t]he specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence"; and "[t]he legislative administrative history, especially . . . [any] contemporary statements by members of the decisionmaking body." Id., at 268.

App. 49a.

The Court concluded:

Because we are not satisfied that the District Court considered evidence of the dilutive impact of the Board's

redistricting plan, we vacate this aspect of the District Court's opinion. The District Court will have the opportunity to apply the Arlington Heights test on remand as well as to address appellants' additional arguments that it erred in refusing to consider evidence that the Board was in violation of an ongoing injunction "to 'remedy any remaining vestiges of [a] dual [school] system'," 907 F. Supp., at 449, n. 18.

App. 50a-51a.

The Court noted that it was leaving "open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent. . . . Reserving this question is particularly appropriate when, as in this case, it was not squarely addressed by the decision below or in the parties' briefs on appeal. . . . The existence of such a [non-retrogressive but nevertheless discriminatory] purpose, and its relevance to § 5, are issues to be decided on remand." App. 45a-46a (citations omitted).

#### B. The District Court's Analysis on Remand.

Soon after this Court issued its mandate, the three-judge D.C. District Court called for short memoranda from the parties setting forth their views of what further proceedings should be required. The court required the parties to state "whether the record needs to be re-opened" and whether additional briefs were required. The record was not re-opened on remand to receive the results of the School Board elections held in March and April 1996 under the Jury plan, because the parties agreed "that there is no need to reopen the

Order filed Aug. 13, 1997, Civ. No. 94-1495. On remand, United States District Judge James Robertson was assigned to fill the vacancy on the panel left by the death of Judge Charles Richey. The panel on remand accordingly consisted of Judge Robertson, District Judge Gladys Kessler, and Circuit Judge Laurence H. Silberman.

<sup>3</sup> Id.

evidentiary record." In fact, this Court had denied a Board motion to supplement the record on the first appeal with the 1996 election results. Reno v. Bossier Parish Sch. Bd., 517 U.S. 1154 (1996). The court set a schedule for further briefing on the application of the Arlington Heights criteria to the largely stipulated record previously developed and "on the relevance to Section 5 of a non-retrogressive, but nevertheless discriminatory, 'purpose[.]"

The D.C. District Court received the parties' briefs on those issues, but ostensibly "decline[d]" to address whether §5's purpose prong encompasses a search for discriminatory intent beyond retrogressive intent. App. 3a. The court searched the record, however, only for retrogressive intent: "The question we will answer . . . is whether the record disproves Bossier Parish's retrogressive intent in adopting the Jury plan." Id. at 4a (emphasis added). The court applied the Arlington Heights factors to this limited question:

1. Effect of the Plan. The D.C. District Court pointed out that "It lhe first Arlington Heights factor is 'the impact of the official action -- whether it bears more heavily on one race than another." App. 5a, quoting Arlington Heights, 429 U.S. at 266. The court noted the argument of Mr. Price and the other intervening defendants that the redistricting worsened the position of black voters by diminishing slightly the percentage of black voting age population in two of the 12 election districts, but concluded that the parties had "stipulated the point away" by agreeing that these reductions are "de minimis." App. 6a. The court next addressed "other allegedly dilutive impacts of the Jury plan": "that some of the new districts have no schools, that the plan ignores attendance boundaries, that it does not respect communities of interest, that there is one outlandishly large district, that several of them are not compact, that there is a lack of contiguity, and that the population deviations resulting from

Order filed Sept. 9, 1997, Civ. No. 94-1495.

<sup>&</sup>lt;sup>5</sup> Id., quoting Reno v. Bossier Parish Sch. Bd., 520 U.S. 471, 486 (1997) (App. 46a).

the jury plan are greater than the limits (± 5%) imposed by Louisiana law." Id. The court conceded that "[t]wo of those points -- failure to respect communities of interest and cutting across attendance boundaries -- might support a finding of retrogressive intent," id. (emphasis added), but thought the point "too theoretical, and too attenuated, to be probative." Id.

- 2. Historical Background of the Adoption of the Plan. The D.C. District Court characterized its previous findings on the historical background of the Jury plan as "provid[ing] powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts." Id. at 7a. In this context, the panel majority addressed for the first time the history of "the school board's resistance to court-ordered desegregation, and particularly its failure to comply with the order of the United States District Court in Lemon v. Bossier Parish School Board, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir. 1967), cert. denied, 388 U.S. 911 (1967), that it maintain a bi-racial committee to 'recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." App. 7a, quoting Stipulation ¶ 111. The court found that the intent proved by that history "is a tenacious determination to maintain the status quo." Id. This, however, the court found "is not enough to rebut the School Board's prima facie showing that it did not intend retrogression." Id. (emphasis added).
- The D.C. District Court conducted only a summary review of the other Arlington Heights factors. The pattern on each is the same: The court found fact after fact that supports the conclusion that the Jury plan was adopted with racial animus, but minimized that evidence because the Jury plan did not set back even further the voting position of the black citizens of Bossier Parish.
- 3. Specific Sequence of Events Leading to the Decision to Adopt the Jury Plan. The D.C. District Court found that the sequence of events "does tend to demonstrate

the school board's resistance to the NAACP plan; it does not demonstrate retrogressive intent." Id. (emphasis added).

- 4. Board Departures from Normal Practice. The court referenced its earlier review of evidence "tending to establish that the board departed from its normal practices," and found that it "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise," but concluded that such "is not evidence of retrogressive intent." Id. (emphasis added).
- 5. Contemporary Statements of Participants. The D.C. District Court referred back to its earlier findings concerning such statements, and concluded that "[t]hey do not establish retrogressive intent." Id. at 8a (emphasis added).

Judge Gladys Kessler once again dissented, because she remained convinced that the Board's decision to adopt the Jury plan was motivated by discriminatory purpose. *Id.* at 12a. Judge Kessler pointed out that her "colleagues have limited their § 5 purpose inquiry to a search for intent to retrogress and have declined to consider whether the § 5 inquiry ever extends beyond that search for retrogressive intent." *Id.* at 13a. That analysis, in Judge Kessler's view, "avoid[ed] carrying out the Supreme Court's directive to (1) inquire into the existence of 'some nonretrogressive, but nevertheless discriminatory, purpose'; and (2) determine the relevance of such a purpose (should one exist) to [the] § 5 inquiry." *Id.* (internal quotation omitted).

Since the parties agreed that the Board's proposed redistricting plan would not have a retrogressive effect, Judge Kessler first addressed whether a nonretrogressive but nonetheless discriminatory purpose to deny or abridge the right to vote on account of race or color warrants denial of preclearance under § 5. She reasoned that if the court "were to deny preclearance under § 5 only to those new plans enacted specifically with a retrogressive purpose, . . . [it] would commit [itself] to granting § 5 preclearance to a

'resistant' jurisdiction's nonretrogressive plan even if the record demonstrated an intent by that jurisdiction to perpetuate an historically discriminatory status quo by diluting minority voting strength." *Id.* at 17a. Because "a construction of § 5 that limits its purpose inquiry to a search for retrogressive intent could require us to preclear nonretrogressive but *nevertheless unconstitutional* voting plans," *id.* (emphasis in original), Judge Kessler concluded that the purpose inquiry does extend beyond a search for retrogressive intent.

That conclusion prompted Judge Kessler to review again the full range of the evidence demonstrating the real reasons why the Board adopted the Jury plan. She cited the Board's admission in a stipulation that it is "obvious that a reasonably compact black-majority district could be drawn in Bossier City." Id. at 19a, quoting Stipulation ¶ 36. Stipulations also demonstrate that the Parish is racially polarized, id. at 19a, citing Stipulations ¶181-96, and "that no black person ha[d] been elected to the Bossier Parish School Board despite the fact that 20.1% of the population is black." Id. (footnote omitted), citing Stipulations 9153, 5. Bossier Parish has a history, recounted by Judge Kessler, of voting-related discrimination including implementation by the State of Louisiana of procedures since the adoption of the Voting Rights Act that dilute minority voting strength. Id. at 20a-21a. Reviewing her previous assessment of the Arlington Heights factors on these facts, Judge Kessler reached the same conclusion:

[T]he only conclusion that can be drawn from the evidence is that the Bossier School Board acted with discriminatory purpose. The adopted plan has a substantial negative impact on the black citizens of Bossier Parish. The sequence of events leading up to the decision show conclusively how the School Board excluded the black community from the redistricting process and rushed to adopt the Police Jury plan only when faced with an alternative plan that provided for black representation. The plan itself ignores and

overrides a number of the School Board's normal paramount interests. And the statements of some School Board members certainly lend strength to the other evidence. . . . We cannot blind ourselves to the reality of the situation and the record before us.

App. 23a (citation omitted).

These appeals followed.

#### SUMMARY OF THE ARGUMENT

Section 5 of the Voting Rights Act calls for a declaratory judgment by the D.C. District Court preclearing a voting change where the covered jurisdiction can establish that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Section 5 echoes the words of the Fifteenth Amendment to the Constitution, which is the authority for Congress' enactment of the Voting Rights Act: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

This Court's cases reviewing the D.C. District Court's § 5 decisions establish core principles supporting the conclusion that the discriminatory "purpose" that bars preclearance of a voting change under § 5 is as broad as the discrimination prohibited by the Constitution:

- The "purpose" and "effect" inquiries both must be conducted in order to determine whether a proposed voting change passes muster under § 5.
- Even if the effect of a voting change is not retrogressive, the proposed change will not be precleared if it was motivated by a discriminatory, unconstitutional purpose.
- The test for determining whether a voting change was motivated by a discriminatory purpose is set forth in Arlington Heights.

Consistent with these principles, on remand the D.C. District Court should have applied the Arlington Heights factors to determine whether any racially discriminatory pose to deny or abridge the right to vote motivated the redistricting plan submitted by the Bossier Parish School Board, without restricting its analysis to a search for "retrogressive intent." The D.C. District Court applied the Arlington Heights factors, but in its analysis of each Arlington Heights element it addressed only whether the evidence demonstrated "retrogressive intent." See App. 5a-8a. That limitation should not be read into the "purpose" analysis under § 5 because it has no foundation in the language or history of the statute, or in the § 5 decisions of this Court. Indeed, the Court has decided "purpose" cases that would have had a different result if its analysis had been limited to a search for purpose to retrogress. Moreover, limiting "purpose" to "retrogressive intent" would require the Attorney General and the D.C. District Court to preclear voting changes that violate the Constitution.

The D.C. District Court found that the Board's adoption of the Jury plan violated traditional districting principles and reflected a strong resolve to maintain 12-of-12 majority-white election districts. The Board sought through its redistricting to maintain a status quo characterized by non-compliance with its unsatisfied desegregation obligations. Under a proper application of the Arlington Heights analysis, these conclusions warrant reversal of the judgment below and denial of preclearance of Bossier's redistricting plan.

#### **ARGUMENT**

1. THE WORDS OF § 5, AND DECISIONS OF THIS COURT APPLYING THEM, MAKE CLEAR THAT THE "PURPOSE . . . OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR" IS ANY UNCONSTITUTIONAL, RACIALLY DISCRIMINATORY PURPOSE.

The critical error of the D.C. District Court on remand was in its failure to recognize the many cases holding that

consideration of purpose is not limited to a search for retrogression. The analysis of "purpose" and "effect" are not the same, and both must be conducted in a declaratory judgment action seeking preclearance of a voting change: "By describing the elements of discriminatory purpose and effect in the conjunctive, Congress plainly intended that a voting practice not be precleared unless both discriminatory purpose and effect are absent." City of Rome v. United States, 446 U.S. 156, 172 (1980) (emphasis in original); accord Lopez v. Monterey County, 119 S. Ct. 693, 703 (1999) ("once a jurisdiction has been designated, [§ 5 of] the Act may guard against both discriminatory animus and the potentially harmful effect of neutral laws in that jurisdiction") (emphasis in original). Giving meaning to both "purpose" and "effect" implements the common-sense principle of statutory construction that sections of a statute generally should be read to give effect, if possible, to every clause. Heckler v. Chaney, 470 U.S. 821, 829 (1985) (finding distinct applications for two provisions of Administrative Procedure Act).6

This Court's cases applying the "purpose" prong of § 5 confirm that the purpose analysis is not the same as the effect test, and is not limited to retrogressive intent. The D.C. District Court's limitation of purpose to retrogressive intent would require preclearance of voting changes adopted with an unconstitutional discriminatory purpose.

<sup>6</sup> See also United States v. Albertini, 472 U.S. 675, 682-83 (1985) (declining to read statute in way that renders one paragraph superfluous); United States v. Menasche, 348 U.S. 528, 538-39 (1955) (quoting Montclair v. Ramsdell, 107 U.S. 147, 152 (1883) and refusing to "emasculate an entire section" of Immigration and Nationality Act because it is the Court's "duty 'to give effect, if possible, to every clause and word of a statute").

A. In Cases Evaluating Whether a Voting Change Satisfies § 5, This Court Has Examined the Full Scope of Discriminatory Purpose that Could Violate the Constitution.

This Court's § 5 decisions are based on the principle that "Ithe Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting." South Carolina v. Katzenbach, 383 U.S. 301, 315 (1966) (footnote omitted). In Katzenbach, the Court upheld the constitutionality of challenged sections of the Voting Rights Act, including § 5, as a valid exercise of Congress' authority under the Fifteenth Amendment. Id. at 327. Section 5 is an appropriate exercise of congressional power because a judicial determination to preclear a voting change "is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment." Id. at 335. An analysis of whether a proposed voting change reflects a discriminatory purpose that would offend the Constitution is the touchstone for preclearance, since "[t]he Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment." Id. at 334.

A determination whether a proposed voting change "will not have the effect of denying or abridging the right to vote on account of race or color" calls for some prediction, as Congress' use of the future tense suggests, of how a voting change will operate in practice. Where redistricting is at issue, "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5." Beer v. United States, 425 U.S. 130, 141 (1976). The Court accordingly concluded in Beer that a new apportionment plan for the New Orleans City Council did not have the "effect" of denying or abridging the right to vote on account of race or color, since the old apportionment plan had five councilmanic districts, in one of which blacks were a majority of the population and about

half of the registered voters. *Id.* at 135. Under the new post-1970-census plan, two districts had black population majorities and one district had a black voter majority. *Id.* at 135-36.

The key to the Court's analysis in Beer is the selection of the baseline for comparison with the new plan to determine whether the new plan will have the "effect" of denying or abridging the right to vote on account of race or color. The Court rejected the proposition that comparison of the "mathematical potential" of black majority districts and "predicted reality" under the new plan was appropriate. Id. at 137. Instead, the Court held that the "effect" prong is properly measured in the redistricting context by comparing the old and proposed new plans. Where the new plan is an "ameliorative new legislative apportionment," it does not have the "effect" of denying or abridging the right to vote. Id. at 141.

The Court carefully explained in its Beer holding that the analysis of "effect" did not change the principle that voting changes in violation of the Constitution should be denied preclearance under the "purpose" prong of § 5: conclude, therefore, that such an ameliorative new legislative apportionment cannot violate § 5 unless apportionment itself so discriminates on the basis of race or color as to violate the Constitution." Id. at 141 (emphasis added). The Court explained why even a voting change with no retrogressive effect should be rejected if it manifests a discriminatory purpose: "It is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and vet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional." Id. at 142 n.14. Because facts demonstrating discriminatory purpose were not present in Beer, and the effect of the redistricting plan was not retrogressive, preclearance was granted.

Beer built on the Court's holding in City of Richmond v. United States 422 U.S. 358 (1975), in which the D.C. District Court had refused to preclear annexation of an area of

Chesterfield County to the City of Richmond, Virginia, on grounds that it was discriminatory both in its purpose and effect. City of Richmond v. United States, 376 F. Supp. 1344 (D.D.C. 1974), vacated, 422 U.S. 358 (1975). The D.C. District Court relied on evidence that the City initially proceeded without seeking the preclearance mandated by § 5, that no legitimate purpose for annexation had been shown, and that a proposed post-election ward system had not minimized to the extent possible the dilution of black voting strength that would be caused by annexing an area with a more substantial proportion of white voters than were present in the City before annexation. City of Richmond, 422 U.S. at 367.

This Court held in City of Richmond that an annexation has the effect of denving or abridging the right to vote on account of race or color only if the resulting election system fails to fairly reflect the voting strength of the black community as it exists after the annexation; the Court rejected the notion that an annexation should be rejected for preclearance because the black community will lose relative influence in the City. Id. at 370-72. Although the Court concluded that the effect of the annexation did not violate § 5, it went on to weigh whether it had a racially discriminatory purpose. Id. at 372. The Court remanded for further proceedings to consider possible legitimate, non-discriminatory reasons for the annexation, a remand that would have been meaningless if the absence of retrogression were dispositive. The Court made very clear in City of Richmond why the inquiry into purpose is required, even if a voting change is not retrogressive:

We have held that an annexation reducing the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation is not a statutory violation as long as the post-annexation electoral system fairly recognizes the minority's political potential. If this is so, it may be asked how it could be forbidden by § 5 to have the pose and intent of achieving only what is a perfectly legal result under that

section and why we need remand for further proceedings with respect to purpose alone. The answer is plain, and we need not labor it. An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color. Congress surely has the power to prevent such gross racial slurs, the only point of which is "to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960). Annexations animated by such a purpose have no credentials whatsoever; for "[a]cts generally lawful may become unlawful when done to accomplish an unlawful end. . . . " Western Union Telegraph Co. v. Foster. 247 U.S. 105. 114 (1918); Gomillion v. Lightfoot, supra, at 347. An annexation proved to be of this kind and not proved to have a justifiable basis is forbidden by § 5, whatever its actual effect may have been or may be.

City of Richmond, 422 U.S. at 378-79. Accord Miller v. Johnson, 515 U.S. 900, 924 (1995) ("[a]meliorative changes, even if they fall short of what might be accomplished in terms of increasing minority representation, cannot be found to violate section 5 unless they so discriminate on the basis of race or color as to violate the Constitution") (citation omitted); City of Port Arthur v. United States, 459 U.S. 159, 168 (1982) (even an electoral scheme that "might otherwise be said to reflect the political strength of the minority community . . . would nevertheless be invalid if adopted for racially discriminatory purposes, i.e., if [a] majority-vote requirement...had been imposed for the purpose of excluding blacks from any realistic opportunity to represent those districts or to exercise any influence on Council members elected to those positions. City of Richmond v. United States, 422 U.S., at 378-379").

This Court's affirmances after Beer and City of Richmond in City of Pleasant Grove v. United States, 479 U.S. 462 (1987) and Busbee v. Smith, 459 U.S. 1166 (1983), further establish that the discriminatory "purpose" prohibited by § 5 is not limited to retrogressive intent. The voting changes at issue in those cases were not retrogressive, but were nonetheless rejected because they were infected with discriminatory purpose.

Pleasant Grove, like Richmond, was an annexation case. The City of Pleasant Grove, Alabama, was "an all-white enclave in an otherwise racially mixed area of Alabama." City of Pleasant Grove, 479 U.S. at 465 (citation omitted). Pleasant Grove annexed two parcels of land, one of which was uninhabited and one of which was home to an extended white family. Id. at 465-66. While these annexations were in process, Pleasant Grove rejected the annexation of an adjacent black neighborhood and attempted to cut off that area's fire protection and paramedic services. Id. at 466. The D.C. District Court found no prohibited effect under § 5, because it could not be said that annexation of a white area that did not alter the racial composition of the voting population had a retrogressive "effect" as described in Beer. City of Pleasant Grove v. United States, 568 F. Supp. 1455, 1458-59 (D.D.C. 1983). The court found, however, that summary judgment preclearing the annexation could not be granted because of evidence of discriminatory purpose under The City's history of the Arlington Heights analysis. discriminatory policies and practices included ordinances "to restrict colored property," opposition to a "colored housing project," refusal to annex black residential areas, and maintenance of a segregated school system. Id. at 1456-57. After trial on the merits, the D.C. District Court denied preclearance based on the purpose prong alone. City of Pleasant Grove v. United States, 623 F. Supp. 782 (D.D.C. 1985), aff'd, 479 U.S. 462 (1987).

This Court affirmed, holding that the trial court's findings were not clearly erroneous that Pleasant Grove's economic justifications for treating adjacent white and black areas differently were flawed pretexts developed after the fact. Pleasant Grove, 479 U.S. at 470. The Court specifically rejected Pleasant Grove's argument that "since the annexation could not possibly have caused an impermissible effect on black voting, it makes no sense to say that appellant had a discriminatory purpose." Id. at 471. A covered jurisdiction cannot "short-circuit a purpose inquiry under § 5 by arguing that the intended result was not impermissible under an objective effects inquiry." Id. at 471 n.11, citing City of Richmond, 422 U.S. at 378-79. Section 5 prohibits voting changes with discriminatory purposes beyond the dilution of existing minority voting strength, the Court concluded, because:

One means of thwarting this process [of racial integration] is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance. This is just as impermissible a purpose as the dilution of present black voting strength. Cf. City of Richmond, supra, at 378. To hold otherwise would make appellant's extraordinary success in resisting integration thus far a shield for further resistance. Nothing could be further from the purposes of the Voting Rights Act.

City of Pleasant Grove, 479 U.S. at 472.

In Busbee v. Smith, 459 U.S. 1166, this Court summarily affirmed the D.C. District Court's conclusion that the Georgia congressional redistricting following the 1980 census could not be precleared under § 5 because it was tainted with discriminatory purpose, although "the voting plan does not have a discriminatory effect, as that term has been construed under the Voting Rights Act." Busbee v. Smith, 549 F. Supp. 494, 516 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983) (relying on Beer, 425 U.S. at 141). The D.C. District Court found no retrogressive effect, because there was one majority black congressional district in the Atlanta area in both the previous and proposed plans; that district gained a few percentage points in black population under the proposed plan. Busbee, 549 F. Supp. at 498, 516. The

court's findings of discriminatory purpose, as in Pleasant Grove, were based on application of the Arlington Heights factors. Id. at 517. The court found overt racial statements (such as statements by the Chairman of the House Permanent Standing Committee on Legislative and Congressional Reapportionment opposing drawing of a "nigger district," 549 F. Supp. at 512); the conscious minimization of black voting strength in the Atlanta area (especially as contrasted with efforts to consolidate communities with consistent interests in other parts of the state, such as the mountains of North Georgia); a history of invidious discrimination; and the absence of legitimate non-racial reasons for the plan. Id. The process was questionable as well. By excluding black legislators "solely because of their race . . . from the finaldecision making process," -- a legislative conference committee -- and entrusting those decisions to "whites who, for racially discriminatory reasons, opposed the creation of a district which might allow black voters an opportunity to elect a candidate of their choice," the process failed to function in a nondiscriminatory manner. Id. at 518.

The D.C. District Court stressed that it expressed no view as to what congressional redistricting plan the Georgia legislature should adopt, and that its "decision does not require the State of Georgia to maximize minority voting strength in the Atlanta area." *Id.* at 518. The court concluded: "The State is free to draw the districts pursuant to whatever criteria it deems appropriate so long as the effect is not racially discriminatory and so long as racially discriminatory purpose is absent from the process." *Id.* 

On appeal, the State of Georgia appellants specifically sought this Court's review of whether a voting plan that lacks the effect of diminishing black voting strength can be held to have a discriminatory purpose. This Court summarily affirmed. *Busbee*, 459 U.S. 1166.

<sup>7</sup> The questions presented in Busbee were:

A. Whether a Congressional reapportionment plan that has no discriminatory effect, that enhances black voting

B. Until This Case, the D.C. District Court Had Not Limited the Analysis of "Purpose" Under § 5 to Intent to Retrogress.

The D.C. District Court in numerous § 5 cases since Beer-in addition to Busbee and City of Pleasant Grove-- has evaluated whether a proposed voting change has a retrogressive effect; regardless of that result, the court also has considered whether the proposed change is the product of a discriminatory purpose, with Arlington Heights and Washington v. Davis setting the framework for the analysis. For example, where a voting change -- the creation of new judgeships -- was found not to have a retrogressive effect, the D.C. District Court has granted summary judgment to a covered jurisdiction on the effect prong of the analysis, but has permitted the United States to conduct discovery into purpose in order to develop evidence regarding the Arlington Heights factors. Arizona v. Reno, 887 F. Supp. 318 (D.D.C. 1995), appeal dismissed, 516 U.S. 1155 (1996). Accord Georgia v. Reno, 881 F. Supp. 7, 11, 14 (D.D.C.), aff d sub. nom. Brooks v. Georgia, 516 U.S. 1021 (1995) (finding neither effect nor purpose in creation of new judgeships); Texas v. United States, 866 F. Supp. 20, 27-28 (D.D.C. 1994) (summary judgment denied on both purpose and effect prongs because of disputed facts concerning change from elected to appointed governing board).

strength, and that provides blacks with equal access to the political process can be deemed to violate Section 5 of the Voting Rights Act.

B. Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level of black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act.

Jurisdictional Statement at i, Busbee v. Smith, 459 U.S. 1166.

<sup>8</sup> Accord County Council of Sumter County v. United States, 596 F. Supp. 35 (D.D.C. 1984) (change to at-large election system for county council had both the purpose and effect of denying or

Since Beer, the D.C. District Court has measured the effect prong by analyzing retrogression, but, until the decision below, the D.C. District Court had never, so far as we are able to discover, restricted a § 5 "purpose" analysis to a search for retrogressive intent. See New York v. United States, 874 F. Supp. 394, 399-400 (D.D.C. 1994) (creation of new judgeships precleared; "preclearance under section 5 represents nothing more than an official determination that a proposed voting change will not diminish the position of minority voters and that it was not undertaken for a discriminatory purpose"); Texas v. United States, 785 F. Supp. 201, 203-04 (D.D.C. 1992) ("Plaintiff's burden in a suit for declaratory judgment under section 5 is twofold: First, it must demonstrate that the redistricting plan does not lead to a retrogression in the position of racial minorities; second, the State must demonstrate that the plan is free of a discriminatory purpose. Even if a change is 'ameliorative,' it may violate Section 5 if it 'so discriminates on the basis of race or color as to violate the Constitution" (quoting Beer, 425 U.S. at 141)).

#### C. The "Retrogression" Limitation on the "Purpose" Analysis Imposed by the Court Below Is Inconsistent with the Intent of Congress.

The court below ruled that "[t]he language of Beer [defining retrogression in terms of a comparison of an old election plan to the proposed plan] is just as applicable to the 'purpose' inquiry as to the 'effect' inquiry." App. 4a. To be sure, this Court explained in Beer that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer, 425 U.S. at 141; see City of Lockhart v. United States, 460 U.S. 125, 133

abridging right to vote based on race); Hale County v. United States, 496 F. Supp. 1206, 1218 (D.D.C. 1980) (change to at-large elections for the Hale County, Alabama county commission had both the purpose and effect of denying or abridging the right to vote on account of race; Arlington Heights factors applied).

(1983) ("Section 5 was intended to halt actual retrogression in minority voting strength without regard for the legality under state law of the practices already in effect"; voting change evaluated only for retrogressive effect, since purpose inquiry had been bifurcated by D.C. District Court) (footnote omitted). Beer and Lockhart both addressed only the "effect" prong of § 5, so these broad statements can most reasonably be understood to describe the particular analysis required to determine whether a voting change has the prohibited "effect."

More fundamentally, the Court's statement in *Beer* could not fairly be read to suggest that in adopting § 5 Congress intended only to halt new stratagems that would actually diminish meaningful participation in elections by black voters as compared to some earlier level. Voter registration and election participation by black voters in some parts of this country in 1965 was almost non-existent. This Court in *Katzenbach* summarized the evidence that was before the Congress when it first enacted the Voting Rights Act:

According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of votingage whites ran roughly 50 percentage points or more ahead of Negro registration.

Katzenbach, 383 U.S. at 313.

Congress made clear through its adoption of multiple means of combating discrimination in voting that it knew the job would be massive. Congress authorized new kinds of litigation to secure voting rights, 42 U.S.C. §§ 1973, 1973a; suspended the use of tests and devices in determining eligibility to vote in certain states and political subdivisions where voter registration and participation were very low, 42

U.S.C. § 1973b; and imposed the preclearance requirement in § 5 for new voting qualifications or prerequisites.

There is no evidence that Congress thought that the enactment of these tools through passage of the Voting Rights Act would create such a level baseline of nondiscriminatory voting opportunity that Congress intended in § 5 only to bar deterioration in the opportunity of blacks to The perpetuation of discrimination through new devices with the purpose of keeping black citizens from participating as voters, even if the new devices were merely as effective as the old ones, would insure that the promise of the Fifteenth Amendment could not become a reality. It is in this context that this Court, in its voting rights decision closest to the date of the passage of the Act, observed that numerous discriminatory requirements and stratagems to bar black citizens from voting had been outlawed by federal courts, but "some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration." Katzenbach, 383 U.S. at 314 (footnote omitted) (emphasis added). Accord Rogers v. Lodge, 458 U.S. 613, 625 (1982) (affirming denial of § 5 preclearance of voting change due to purposeful discrimination evident in part through "practices which, though neutral on their face, serve to maintain the status quo"). The Voting Rights Act was designed to combat a discriminatory status quo as well as to avoid future retrogression.

Congress has not limited the overall reach of § 5 to retrogressive voting changes as the circumstances of black and other minority voters have improved. In the reauthorization of the Voting Rights Act in 1982, the Committee on the Judiciary of the House of Representatives found "that there has been much progress in increasing registration and voting rates for minorities since the passage of the Voting Rights Act of 1965," but that "these gains are fragile. The registration figures for minorities remain substantially lower than those for white voters." H.R. Rep.

No. 97-227 at 7 (1981). In light of that evidence, and evidence of continued discrimination in registration and voting through a variety of mechanisms, the Judiciary Committee recommended and the Congress approved the extension of § 5, the "speedy review mechanism to correct existing Fifteenth Amendment violations and to prevent future voting discrimination," with no change in the language of § 5 that would limit "purpose" to purpose to retrogress. Id at 13.

#### D. Limiting the Purpose Inquiry Under § 5 to Retrogressive Intent Would Require Preclearance of Voting Changes that Violate the Constitution.

This Court and the Congress have linked § 5 preclearance to the goal of barring voting changes that discriminate on the basis of race or color. It takes no imagination to identify voting changes that should be denied preclearance under § 5 because of their discriminatory purpose, but that would not be halted if the search for purpose is limited to "purpose to retrogress." This Court has held that certain voting practices requirements violate the Fourteenth or Fifteenth Amendment although they do not present "retrogression" in anything like the numerical sense addressed in Beer. For example, if a covered jurisdiction were to seek a declaratory judgment preclearing a rule requiring candidates to be identified by race on the ballot, that change should be denied Such a requirement violates the equal protection clause of the Fourteenth Amendment. Anderson v. Martin, 375 U.S. 399, 402 (1964). Yet that type of voting change is not readily analyzed under a retrogression test. Fact issues could be extensive in litigation over whether listing of race on the ballot would have an impact on voting patterns. Regardless of whether such a requirement would gain or lose votes for candidates by race, it should be denied preclearance because it represents government's endorsement of consideration of race in the casting of ballots. Id.

If a covered jurisdiction proposed preclearance of a rule requiring the disenfranchisement of misdemeanants convicted of crimes involving moral turpitude, for example, preclearance should be denied if the jurisdiction does not demonstrate the absence of a racially invidious intent to limit the eligibility of black voters. See Hunter v. Underwood, 471 U.S. 222 (1985). Fact and opinion witnesses no doubt would clash in their predictions of whether such a change would diminish voter participation by race. Whether or not it is possible to prove that such a device actually would diminish the practical ability of black citizens to elect candidates of their choice, such a rule should be denied preclearance if it is intended to disqualify black voters.

If a covered jurisdiction relocated polling places from centers that are familiar and readily accessible to black voters to areas inconvenient and perceived as hostile to the black community, that voting change is subject to the preclearance requirement of § 5. See Perkins v. Matthews, 400 U.S. 379, 387-88 (1971). If the jurisdiction brought the change in polling places to the D.C. District Court for preclearance, it should be denied regardless of factual conflicts about whether black voters would actually be deterred. If white leaders testified that they changed the polling places just out of hatred, to force black voters to come to them in order to participate, it should matter not at all whether a single black voter would refrain from voting at the new polling place. Such discrimination should not be dignified with preclearance since it is unsupported by any rational, nondiscriminatory basis.

Denial of preclearance to a redistricting plan infected with a discriminatory purpose that is not retrogressive is important in jurisdictions like Bossier Parish, in which the existing plan against which retrogression is measured has no majority black election districts and only white candidates had ever been elected to the School Board at the time of the adoption of the proposed plan. In such jurisdictions, voting changes imposing any conceivable means of limiting black voter participation could pass muster under the "effect" prong of § 5, as long as they merely hold even the white dominance of the electoral system. If the "purpose" analysis also is limited to "intent to retrogress," the D.C. District Court would have

to preclear even the most flagrantly racist efforts to hold down a low baseline of meaningful black voter participation.

In short, a covered jurisdiction's "extraordinary success in resisting integration" should not become a "shield for further resistance," City of Pleasant Grove, 479 U.S. at 472, that requires preclearance of voting changes that seek only to maintain the status quo for the racially invidious reason that the status quo is very favorable to white voters. In redistricting cases, such a jurisdiction could pass a plan designed to maintain the status quo, accompanied even with the most overt and outlandishly racist statements, and still gain preclearance of its plan.

Congress sought in the Voting Rights Act to break the status quo, which was characterized by discrimination that kept meaningful black voting participation at very low levels. Racially motivated efforts to maintain that status quo are as invidious and violative of the Constitution as are efforts to retrogress.

APPLYING THE ARLINGTON HEIGHTS STANDARD TO THE UNCONTESTED FACTS BELOW. COURT SHOULD THIS REVERSE BECAUSE THE BOARD'S PROPOSED DISTRICTING PLAN WAS MOTIVATED BY A PURPOSE TO DISCRIMINATE ON THE BASIS OF RACE.

The facts in this case, to a remarkable degree, have been stipulated by the parties. App. 145a-232a. The summary of the facts herein relies principally on the stipulations and on the findings of the majority below, and applies the *Arlington Heights* factors, as the D.C. District Court was directed to do on remand. *Id.* at 49a.

Because the Board was starting from a baseline of no majority black election districts, retrogression is not the salient factor in the inquiry. The Board's adoption of the Jury plan was surrounded with racial tension, marked by irregular procedures and deviations from traditional districting principles, and what the D.C. District Court found to be a "tenacious determination to maintain the status quo."

Id. at 7a. The evidence establishes that preclearance of the plan should be denied because the Board has not carried its burden of demonstrating the absence of a purpose to deny or abridge the right to vote on account of race or color.

#### A. Effect of the Plan.

In 1992, in response to the need to redistrict for one-person-one-vote purposes following the 1990 census, the Board adopted a 12 single-member-district reapportionment plan with 12 majority-white districts. The Board's plan during the 1980s also had no majority black districts. By 1990, however, Bossier Parish, Louisiana had a population that was 20.1% black, id. at 145a-146a (¶ 5), and a voting age population that was 17.6% black. Id. at 146a (¶ 6). Black students also comprise 29% of the enrollment in the Parish's public schools. Id. at 81a n.2; id. at 191a (¶ 142). No black candidate, however, had ever been elected to the 12-member School Board when the plan was adopted in 1992. Id. at 145a (¶ 4).

As the parties stipulated below, voting patterns in Bossier Parish are affected by racial preferences. *Id.* at 201a-207a (¶¶ 181-196). The foreseeable impact of the Board's adoption of a redistricting plan with all majority-white districts, therefore, was to ensure that when black voters and white voters prefer different candidates, white voters' preferences will prevail, *see id.* at 118a-120a, perpetuating the status quo.

The record furthermore showed that the creation of 12 majority-white election districts was not dictated by adherence to traditional redistricting principles. The parties stipulated and the court below found that the black population of the Parish is concentrated in two areas. More than 50% of the black residents live in Bossier City, App. 79a; id. at 146a-147a (¶ 10); another significant percentage of black residents is concentrated in communities in the northern rural portion of the Parish. Id. The School Board stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," id. at 154a-155a (¶ 36), and that the outlines of a second such

district in the northern part of the parish were "readily discernible." *Id.* at 194a (¶ 148). By fragmenting or "fracturing" predominantly black residential areas, however, the Board avoided drawing any majority-black districts. *See id.* at 190a-192a (¶¶ 137-138, 142). On remand, Bossier conceded that "[t]he impact of [its] plan does fall more heavily on blacks than on whites," and, more specifically, that its election plan "did dilute black voting strength." Brief In Behalf of Plaintiff on Remand at 12, 21.

The Board's plan not only has a harsh impact on black voters; it departs substantively from its earlier districting plans and ignores factors that it had previously considered paramount. App. 128a-129a. For example, the Police Jury plan pitted School Board incumbents against one another in two districts. *Id.* at 85a. Likewise, as the court below recognized, the Police Jury plan distributed schools unevenly, with some election districts containing no schools and other districts containing several. *Id.* at 85a; see also id. at 151a, 191a (¶¶ 24, 141).

The plan also contained one district that included "almost half of the geographic area in the Parish," *id.* at 129a, several others that were not compact according to the Board's own cartographer, *id.* at 191a (¶ 139), and one district that was not contiguous. *Id.* at 6a; J.A. 221-238 (Cooper). The plan also violated a state law requirement that no election district deviate from the one-person, one-vote ideal by more than 5%. *Id.* ¶ 31; La. R.S. 17:71.3 E(2)(a) and E(3)(a) (J.A. 374-379).

The Board stipulated to facts showing that its plan does "not respect communities of interest in Bossier Parish." App. 129a (citing Stipulations ¶ 135-37). What the plan did accomplish was splitting black communities and retaining all white-majority election districts. The panel majority below found that those departures from the Board's traditional districting criteria "establish[] rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 7a.

#### B. Historical Background of the Adoption of the Plan.

The adverse effects of racially polarized voting on the ability of black voters to elect candidates of their choice are exacerbated in Bossier Parish by the effects of past discrimination. App. 210a-218a (¶¶ 213-243). It was undisputed below that the depressed socioeconomic and educational levels of black citizens of Bossier Parish make it hard for them "to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote; [these factors] in turn cause a depressed level of political participation." *Id.* at 207a-210a (¶¶ 197-202, 206-213).

The dark history of voting discrimination in Bossier Parish was undisputed below. Id. at 210a-216a (99 214-232). The parties stipulated that "vestiges of discrimination persist which affect the rights of black persons to register, to vote or otherwise participate in the democrative process." Id. at 210a (¶214). After the passage of the Thirteenth Amendment, significant numbers of black Louisianans registered to vote. Id. at 210 (¶215). Beginning in 1896, however, Louisiana enacted laws intended to reduce black voting; black registration decreased by 90% within a few years. 121a; id. at 210a-211a (¶ 215-219). In 1921, an amendment to the State Constitution required persons seeking to register to vote to "give a reasonable interpretation" of a constitutional provision. Id. at 122a, 211a-212a (¶ 221). That amendment, which disenfranchised most black citizens. was not invalidated until 1965. Louisiana v. United States. 380 U.S. 145 (1965). After an all-white Louisiana Democratic primary was invalidated, the party then adopted an anti-single-shot rule and a majority-rule requirement for party office. App. 122a; id. at 212a (¶ 222); Major v. Treen. 574 F. Supp. 325, 340-41 (E.D. La. 1983).

The School Board's history of discrimination in education against black citizens demonstrates its motive for wanting to continue 12 majority-white districts. The schools in Bossier Parish are segregated by race. App. 123a-124a (four elementary schools have predominantly black enrollments);

id. at 217a-218a (¶ 240-242). While the District's total school enrollment is only 29% black, Bossier and Butler Elementary Schools, whose attendance areas are adjacent to one another in Bossier City, were 77% and 74% black in 1994. U.S. Exh. 84YY; U.S. Exh. 84KK. Likewise, both schools in Board Member Thomas Myrick's district in the northern portion of the Parish have become more than 75% black, J.A. 247-248, a telling contrast to the Board's claim periodically in this litigation that black residential population is not sufficiently concentrated to permit it to draw majority-black voting districts. So long as black voters had no voice, and their children are largely isolated in predominantly black schools, the Board could safely ignore their concerns. For decades this has been the case.

The Board maintained de jure segregation in its schools long after Brown v. Board of Education, 347 U.S. 483 (1954). App. 122a; id. at 216a (¶ 235). While the Board has been a defendant for more than 30 years in the school desegregation case of Lemon v. Bossier Parish School Board, C.A. No. 10,687 (W.D. La.), it still has not fulfilled its constitutional obligations to remedy segregation and establish a unitary school district. App. 122a-124a. See Lemon v. Bossier Parish Sch. Bd., 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967).

The parties stipulated that the "Board for years sought to limit or evade its desegregation obligations." App. 216a (¶ 237). The Board used techniques such as assigning "black children of Barksdale Air Force Base personnel to black schools without a right, to transfer to white schools [on grounds] that they were 'federal children' and not within the 'jurisdiction' of the school district." Id. at 216a-217a (¶ 237). Judge Wisdom rejected the Board's "new and bizarre excuse for rationalizing [its] denial of the constitutional right of Negro school children to equal educational opportunities as white children." App. 217a (¶ 237) quoting Bossier Parish School Bd. v. Lemon, 370 F.2d 847, 849 (5th Cir. 1967). The federal courts rejected the Board's "freedom of choice" and

other student assignment plans, including one that proposed to assign students to schools in Plain Dealing on the basis of their scores on the California Achievement Test. App. 217a (¶ 238). See Hall v. St. Helena Parish Sch. Bd., 417 F.2d 801 (5th Cir. 1969); Lemon v. Bossier Parish Sch. Bd., 421 F.2d 121 (5th Cir. 1970); Lemon v. Bossier Parish Sch. Bd., 444 F.2d 1400 (5th Cir. 1971).

While the school desegregation consent decree requires the Board to follow *Singleton* standards and assign teachers to schools by race in approximately their proportion in the District as a whole, the Board has assigned black teachers disproportionately to predominantly black schools, such as Bossier and Butler Elementary Schools, contributing to their increasing racial identifiability. *See Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir. 1969), cert. denied sub nom. West Feliciana Parish Sch. Bd. v. Carter, 396 U.S. 1032 (1970); App. 217a-218a (¶ 239-240); J.A. 281-287 (Lewis) (admitting deliberate assignment of more than 70% black faculty to predominantly-black Butler Elementary School, despite the fact that district-wide black faculty had declined to less than 10%).

As the court below recognized when it examined this evidence on remand, "the intent [this history] proves . . . is a tenacious determination to maintain the status quo." App. 7a. Black citizens have tried without success to alter these policies and practices. Bossier is required by federal court order to maintain a biracial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Id. at 182a (¶ 111). The Board admitted that, for decades, it simply ignored this requirement altogether. Id. at 182a-183a (¶ 112). In 1993, the Board established a committee; but when black members made policy suggestions, the Board unilaterally disbanded the committee. App. 184a (¶ 116); id. at 124a. As Board members admitted, they did not want this committee getting into "policy" questions. Id. Even in the face of a federal court mandate to listen to the concerns of the black community, Bossier refused to do so. As a result, the black

citizens of Bossier Parish are effectively cut off from any opportunity to have a voice in the operation of their public schools. Adopting a redistricting plan with 12 majority-white districts continued this pattern of exclusion. This history, as the majority found on remand, "provides powerful support for the proposition that... Bossier... resisted adopting a redistricting plan that would have created majority black districts." *Id.* at 7a.

# C. Specific Sequence of Events Leading to the Decision to Adopt the Jury Plan.

The redistricting process began in May 1991, when the Board decided to develop its own plan rather than adopt the one previously accepted by the Police Jury in response to its own need to redistrict following the 1990 census. Throughout the 1980s the Jury and the Board had different election districts, but both had 12 single-member districts that were majority white. *Id.* at 79a-81a; 151a, 171a (¶¶ 22, 80-81).

Given the fact that the next School Board election was not scheduled until November 1994, there was no need for hasty Board action. *Id.* at 81a-82a. The Board hired Gary Joiner, the cartographer who had drawn the Jury plan. *Id.* He was hired to perform 200-250 hours of work, far more time than would be needed simply to recreate the Jury plan. *Id.* at 173a (¶¶ 86-87).

On July 29, 1991, the Police Jury plan was precleared by the Justice Department. *Id.* at 80a. The parties stipulated, however, that members of the Police Jury were "specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City." *Id.* at 154a, 160a-161a, 162a (¶¶ 36, 52-53, 57); the parties stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City." *Id.* at 154a-155a (¶ 36). Alternate configurations for a contiguous majority-black district in the northern part of the Parish also could be created. *Id.* at 194a (¶ 148). However, the Police Jury deliberately misled the public, *id.* at 161a-162a (¶ 54), the only black police juror, *id.* at 159a (¶ 47),

and the Attorney General, id. at 165a-166a (¶¶ 65-66), by claiming that drawing any majority-black district was impossible. Despite these misrepresentations, some black community groups opposed the plan and specifically asked that their letter expressing concerns about it be included in the Police Jury's § 5 submission. Id. at 147a, 165a-166a (¶¶ 11, 65-66). The letter was not submitted.

School Board member Thomas Myrick participated in private meetings with Mr. Joiner and white police jurors during this time. App. 82a; id. at 159a-160a, 172a-173a (¶¶ 48, 85). After these meetings, Mr. Myrick, who lives in an area that the parties stipulated "would likely be included in any majority-black district to be drawn in the northern part of Bossier Parish," id. at 160a (¶ 48), recommended that the Board adopt the Police Jury plan. Id. at 174a (¶ 90). "On September 5, 1991, however, the Board decided not to adopt the Jury plan, largely because it would pit incumbents against each other." Id. at 125a (emphasis added). "Over the course of the next year, Board members considered a number of redistricting options." Id. "Mr. Joiner met privately with Board members and demonstrated different possibilities to them on his computer." Id. at 125a; 176a (¶ 96). These meetings were not open to the public, nor were there any recorded minutes or published notices of the meetings. Id. at 126a; 176a (¶ 96).

While the School Board was meeting and planning in private, the black community was trying, unsuccessfully, to participate in public. *Id.* at 126a. In March of 1992, George Price, on behalf of a coalition of black community groups, wrote to the Board asking to participate in its redistricting process. App. 82a; *id.* at 175a (¶ 93). Neither the Board nor the Superintendent responded to this request. *Id.* In August

Despite the Board's stipulations about Mr. Myrick's meetings with Mr. Joiner and the Police Jurors, App. 159a-160a, 172a-173a (¶ 48, 85), and Mr. Joiner's live testimony about such meetings, J.A. 260-266 (Joiner), Mr. Myrick denied on the witness stand that any of them took place. J.A. 247-258 (Myrick). The D.C. District Court rejected Mr. Myrick's testimony. App. 82a.

of 1992, Mr. Price sent another letter asking specifically to be involved in every aspect of the redistricting process. *Id.* (¶ 94).

Frustrated by the Board's unresponsiveness, Mr. Price contacted the NAACP Redistricting Project in Baltimore, Maryland. Id. at 177a (¶ 98). The Project was able to develop a partial plan for Mr. Price to discuss with the School Board. That illustrative plan consisted of two majority-black districts. Id. The plan did not show the other 10 districts that would make up the Parish. Id. When Mr. Price gave this information to a school district official, he was told that it would not even be considered because it only showed two districts. Id. (¶ 99). Mr. Price went back to the NAACP, and a complete 12-district illustrative plan was The parties stipulated that this plan Id. demonstrated that "two contiguous districts with a black voting age population majority can be drawn within Bossier Parish for the Bossier Parish School Board." Id. at 192a (9 143).

On September 3, 1992, when Mr. Price appeared on behalf of the black community at a Board meeting and presented a new plan showing all 12 districts, including 10 majority-white and two majority-black districts, the Board dismissed it summarily, claiming incorrectly that it could not even consider any plan that split precinct lines. *Id.* at 177a-179a (¶¶ 100-102). Until that time, however, the School Board had been actively considering alternatives to the Police Jury plan, almost all of which would have split precincts. *See* App. 107a; *id.* at 151a, 174a (¶¶ 23, 89).

At the Board's next meeting, on September 17, 1992, Mr. Price again presented the NAACP's illustrative plan. Id. at 179a-180a (¶ 106). Instead of discussing the plan with Mr. Joiner, or asking him to further analyze the possibility of drawing black-majority districts without splitting precincts (the Board's purported reason for rejecting the plan, but see id. at 151a (¶ 23)), the Board responded by immediately passing a motion of intent to adopt the Jury plan. Id. at 127a.

Around this time, a narrow majority of the Board appointed Jerome Blunt as the first black person ever to serve on the Board. *Id.* at 84a. Mr. Blunt was appointed to a six-month term representing an 11% black district. *Id.* at 84a-85a. He was sworn in at the September 17, 1992, meeting but was defeated by a white candidate in the special election six months later. *Id.* at 85a. As Judge Kessler observed:

Certainly, Board members knew that adopting the Police Jury plan would ignite controversy in the black community. And on the very night of that decision, the School Board appointed a black to fill a seat that they knew he would be unable to hold, hoping to quell the political furor over adoption of the Police Jury plan. [Id. at 133a-134a n.9.]

On September 24, 1992, an overflow crowd attended the state-mandated public hearing on the redistricting plan. *Id.* at 85a. Fifteen people spoke against the Board's proposed plan, most of whom objected because it would dilute minority voting strength. App. 85a; *id.* at 180a-181a (¶ 108). Not a single person spoke in favor of the plan. *Id.* At this hearing, Mr. Price also presented the Board with a petition signed by more than 500 Bossier Parish residents, asking the Board to consider an alternative redistricting plan. *Id.* at 85a. This was the largest petition presented to the Board on any subject in years. *Id.* at 180a (¶ 108).

Despite the one-sided input from Bossier citizens, and despite the fact that elections still were more than two years away, the Board voted, at its very next meeting on October 1, 1992, to adopt the Jury plan. While Jerome Blunt encouraged the other Board members to explore the issues being raised by the black community, the Board refused. J.A. 125-130 (Blunt); id. at 80-83 (U.S. Exh. 36). Mr. Blunt abstained from the vote in protest, id; but the white majority present voted unanimously for the Jury plan. App. 85a. Neither at this hearing nor at its other meetings did the Board members explain on the record their reasons for their support of the Police Jury plan. See J.A. 60-69, 72-83 (U.S. Exhs. 23-36). Thomas Myrick, in the one verbatim statement concerning

redistricting recorded in two years of Board minutes, told Mr. Blunt that this was not a question of "black and white" but of "majority rule." J.A. 80-83 (U.S. Exh. 36 at 67). The Board's minutes reflect an unexplained retreat to the Police Jury plan that it had rejected a year earlier. J.A. 72-77, 80-83 (U.S. Exhs. 32, 34, 36). Thus, no perceived strengths of the Police Jury plan are discussed or documented anywhere on the public record of the Board's action. As with the meetings of September 3 and September 17, 1992, the minutes of this meeting reflect virtually no substantive consideration of the Police Jury plan.

The D.C. District Court concluded that "[w]hen ... the redistricting process began to cause agitation within the black community, ... the Police Jury plan became, as Board member Myrick described it, 'expedient." App. 106a. The Jury plan only became "expedient" when the Board was publicly confronted with an illustration that alternatives to 12 white-majority districts were possible. Faced with the growing frustration of the black community at being excluded from educational policy decisions and from the electoral process, the only way for the Board to ensure a plan with all majority-white districts was to adopt the Jury plan quickly, despite its other drawbacks. App. 128a; id. at 85a, 106a.

## D. Board Departures from Normal Practice.

The sequence of events described in section C. above illustrates numerous departures from normal practice in the Board's consideration and adoption of the Jury plan. Procedurally, the Board rushed to a decision, with no upcoming election, upon being confronted with a demonstration that majority black election districts could be drawn. The Board departed from the conduct expected of elected officials when it adopted the Jury plan in defiance of the contrary views of every speaker at the public hearing and in the face of the largest petition it had received in recent years on any issue. The Board hid its real deliberations from the public, made no official record of its reasoning, and

ignored the efforts of leaders in the black community to be included.

On the substance of the plan as well, the Board reached a result contrary to its own districting goals and traditional principles that would be expected to govern the development of an election plan for a school board. See page 29, supra. The D.C. District Court majority below evaluated these departures from traditional districting practice as part of its analysis of the "effect" of the plan. App. 6a. The D.C. District Court summarized its earlier findings as "tending to establish that the board departed from its normal practices," and found that this "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." Id. at. 7a.

## E. Contemporary Statements of Participants.

The motivation that School Board member Thomas Myrick described on the stand as "expediency," he and other Board members spoke about more candidly in private. Mr. Myrick, who lives in one of the areas that could accommodate a black-majority district and that contains two schools -- both of which have student enrollments that are more than 75% black -- told black leaders that he would not "let [them] take his seat away from him." Id. at 83a n.4. School Board member Henry Burns told a black acquaintance that "while he personally favors having black representation on the board, other school board members oppose the idea." Id. at 83a n.4. The School Board offered no evidence denying or explaining this statement. School Board member Barry Musgrove told a prominent black leader that "while he sympathized with the concerns of the black community, there was nothing more he could do ... on this issue because the Board was 'hostile' toward the idea of a black-majority district." Id.

In subsequent efforts to justify the unexplained reversal of its initial decision and its refusal to consider alternatives from the black community, the Board later offered the Attorney General and the District Court a series of pretextual explanations, including several which the majority itself found "clearly were not real reasons." *Id.* at 106a n.15. For example, the Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with *Shaw* v. *Reno*, 509 U.S. 630 (1993) (decided June 28, 1993) even though *Shaw* was decided nine months after the Board adopted its plan. *Id.* 

The Board also reiterated its claim that it could not adopt a plan with fewer than 12 majority-white districts because any such plan would require precinct-splitting, which it erroneously claimed violates state law. App. 135a. The majority found, however, that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." *Id.* at 108a. Indeed, the majority found and the parties stipulated that the Board was aware when it entered the redistricting process that if it did not adopt the same plan as the Police Jury, it would need to have new precincts established. App. 108a, *id.* at 174a (¶ 89). Yet the Board hired Gary Joiner to perform 200 to 250 hours of work, far more than would be necessary simply to recreate the Jury Plan. *Id.* at 173a (¶¶ 86-87).

But it was only after the black community presented its alternative plan that the School Board proffered the "no precinct-splitting" rationale. Furthermore, while the Board itself may not split precincts, police juries have the authority to establish and modify precinct lines, and many do so when requested by a school board. *Id.* at 148-152a, 164a (¶¶ 13-25, 60-61). Here, as the majority found, the Board never made such a request. *Id.* at 84a.

Bossier's final later-proffered justification for adopting the Police Jury plan was that it guaranteed preclearance; that is, the Attorney General would approve the Board's plan because it was identical to the Jury plan which already had been precleared. *Id.* at 137a. However, "guaranteed preclearance" was not the Board's objective; if it had been, the Board would not have waited until October 1, 1992 -- almost 14 months after the Jury plan was precleared -- to adopt it. *Id.* Moreover, adopting a plan with one or more majority-

black districts certainly would not have made preclearance less likely. To the contrary, given the Board's history and the Attorney General's position, the Board could not reasonably have believed that a plan that would both honor traditional districting principles and improve the opportunity of black citizens to participate in the political process would have had less chance of preclearance than the Police Jury plan.

#### CONCLUSION

For all of these reasons, this Court should reverse the judgment below.

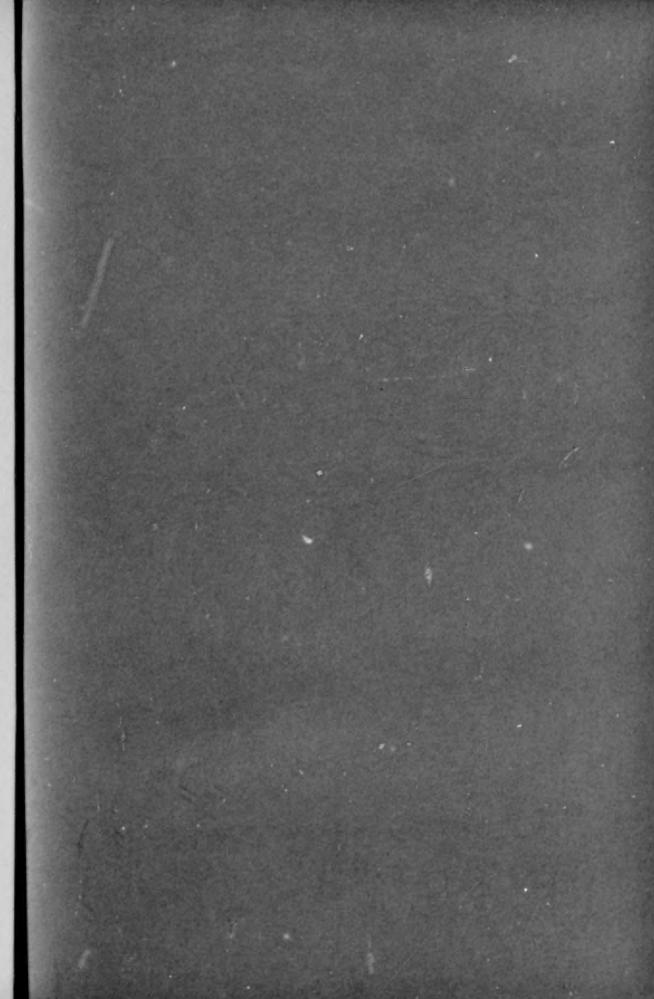
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Nos. 98-405 and 98-406

# In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

### BRIEF FOR THE FEDERAL APPELLANT

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### **QUESTION PRESENTED**

Whether the district court erred in concluding that, because Bossier Parish School Board's 1992 redistricting plan was not enacted with a retrogressive purpose, it was not enacted with "the purpose \* \* \* of denying or abridging the right to vote on account of race," within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.



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# In the Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-405 JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

No. 98-406 GEORGE PRICE, ET AL., APPELLANTS

v.

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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

### BRIEF FOR THE FEDERAL APPELLANT

### **OPINIONS BELOW**

The opinion of the district court (J.S. App. 1a-28a)<sup>1</sup> is reported at 7 F. Supp. 2d 29. An earlier opinion of the district court (J.S. App. 78a-144a) is reported at 907 F. Supp. 434. This Court's opinion on appeal from the district court's initial decision (J.S. App. 29a-77a) is reported at 520 U.S. 471.

### JURISDICTION

The judgment of the three-judge district court was entered on May 4, 1998. J.A. 33. Notices of appeal

<sup>&</sup>lt;sup>1</sup> "J.S. App." refers to the appendix to the jurisdictional statement in No. 98-405.

were filed on July 6, 1998 (the Monday following Friday, July 3, a federal holiday). J.A. 33-34. This Court noted probable jurisdiction on January 22, 1999. J.A. 408. This Court's jurisdiction rests on 42 U.S.C. 1973c.

# CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Reproduced in an appendix to this brief (App., infra, 1a-2a) are pertinent provisions of the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

#### STATEMENT

1. The State of Louisiana and all of its political subdivisions are jurisdictions covered by the "preclearance" requirement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. See 28 C.F.R. Pt. 51 App. Section 5's preclearance requirement provides that a covered jurisdiction may not implement any change in its election practices unless either (1) it has first submitted the proposed change to the Attorney General and the Attorney General has not interposed an objection to the change within 60 days, or (2) it has obtained a declaratory judgment from the United States District Court for the District of Columbia that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. This case involves the effort by the School Board of Bossier Parish, Louisiana (appellee or Board) to gain preclearance for a redistricting plan that it adopted in 1992.

Bossier Parish is located in northwestern Louisiana. The Parish's primary governing body, the Police Jury, and the Parish's separate School Board each consist of 12 members elected from single-member districts by majority vote to four-year concurrent terms. J.S. App. 145a. There is no legal requirement that the 12 Police Jury districts and the 12 School Board districts be the same, and the districts for the two bodies were differ-

ent throughout the 1980s. Id. at 150a-151a.

The School Board and the Parish both have a history of racial discrimination beginning before the Civil War and continuing to the present. J.S. App. 210a-220a. That discrimination has affected both the administration of the school system by the Board and the drawing of voting districts for elections to both the Board and the Police Jury.

As for the administration of the school system, de jure segregation prevailed in Louisiana's schools long after this Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954). J.S. App. 216a. In 1965, the Board was placed under a court order to eliminate the vestiges of racial discrimination in its school system. Lemon v. Bossier Parish Sch. Bd., 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967). The Board repeatedly sought to evade its desegregation obligations through a variety of devices, and it remains subject to that court order, its 1979 request for termination having been denied. J.S. App. 216a-217a. The Board has continued to violate the Lemon court's order to maintain a biracial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Id. at 182a-183a. The Board also has continued to assign disproportionate numbers of black faculty to schools with predominantly black enrollment. The schools in Bossier Parish have, in fact, become increasingly segregated by race since the 1980s. Id. at 217a-218a.

As for the Parish's electoral systems, in 1990, black persons comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. J.S. App. 145a-146a. The black population of the Parish is heavily concentrated in two areas. More than 50% of the black residents live in Bossier City, and the remaining black population is concentrated in four populated areas in the northern rural part of the Parish. Id. at 146a-147a. Voting patterns in the Parish are polarized along racial lines, see id. at 201a-206a; see also J.A. 163-174 (analysis by government's expert); one Police Juror estimated that at least 80% of white and black voters choose candidates of their own race, J.S. App. 201a. The parties have also stipulated that it is feasible to draw two reasonably compact majority-black districts in the Parish using traditional districting features such as roads, streams, and railroads. Id. at 154a-155a, 192a-194a. Nevertheless, the Police Jury has never enacted a districting plan with any majority-black districts, id. at 79a, and black voters have historically been unable to elect candidates of their choice to political positions in the Parish, id. at 195a-206a; see J.A. 174 (government's expert concluding that, because of racially polarized voting patterns and bloc voting, "African American voters are likely to have a realistic opportunity to elect candidates of their choice \* only in districts in which they constitute a majority of the voting age population").2

When the largely stipulated record was compiled in this case, no black person had ever been elected to the School Board. J.S. App. 195a. In the 16 elections in the Parish held from 1981 through 1993 in which a black candidate ran against a white candidate in a single-member district or for mayor, only two black candidates (one for Police Jury, one for Bossier City Council) won. Both of those candidates ran in districts that contained a United States Air

2. After the 1990 census revealed that its districts were malapportioned, the Police Jury began the process of redistricting. "At the time of the 1990-1991 redistricting process, some Police Jurors were specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City," and "it was obvious that a reasonably compact black-majority district could be drawn within Bossier City." J.S. App. 154a-155a. Nonetheless, during public meetings in April 1991, white Police Jurors and the Police Jury's cartographer, Gary Joiner, told citizens that it was impossible to create such districts because the black population was too dispersed. *Id.* at 160a-162a.

Force base that increased the ability of black voters to elect representatives of their choice, in a manner peculiar to those districts. *Id.* at 196a-198a, 199a-200a, 206a; J.A. 168-170, 515-521. When the plans were reconfigured after the 1990 census in a way that reduced the effect of the Air Force Base area, the black incumbent Police Juror was reelected unopposed in 1991 (J.S. App. 198a), and the incumbent black Bossier City Councilmember faced a white challenger in 1993 and lost (*id.* at 200a).

Before its earlier decision in this case, this Court denied the Board's motion to supplement the record with the results of an election that occurred after the district court's 1995 decision. Reno v. Bossier Parish Sch. Bd., 517 U.S. 1154 (1996). On remand, the parties agreed to rest on the record that had previously been compiled. J.S. App. 1a. The district court offered the Board two opportunities to reopen the record, which the Board declined. Thus, the district court decided this case on the basis of stipulated facts showing that voting is racially polarized in the Parish, and that no black person had ever been elected to the Board. The Board later asked the district court to take judicial notice of election results after the court's November 1995 judgment, in which blacks were elected to the Board. The district court denied the motion, and explained that, were it "to consider the election results at all, [it] would need more information about them." Id. at 1a-2a n.1; see also 98-405 Gov't Opp. to Mot. to Aff. 3-4 n.2.

On April 30, 1991, the Police Jury adopted a redistricting plan that, like all of its predecessors, contained no majority-black districts. *Id.* at 163a-164a. The plan required the creation of 20 new precincts and was not the alternative with the fewest precinct splits. *Id.* at 167a-168a.

On May 28, 1991, the Police Jury submitted its redistricting plan to the Department of Justice for preclearance under Section 5. The Police Jury did not provide the Department with information then available to it showing that reasonably compact majority-black districts could be created. Nor did it provide a copy of a letter from the Concerned Citizens of Bossier Parish, a local organization, protesting the Police Jury's exclusion of black citizens from the redistricting process, despite the organization's express request that the letter be included in the Police Jury's Section 5 submission. On July 29, 1991, based on the information submitted to it, the Department of Justice precleared the plan for Police Jury elections. J.S. App. 165a-167a.

3. The School Board initially proceeded without urgency on its own redistricting process, as its next elections were not scheduled to occur until October 1994. J.S. App. 172a. On May 2, 1991 (after the Police Jury had adopted its plan), the Board held a meeting to which the Police Jury's cartographer, Joiner, was invited. Joiner reminded the Board that, because no election was scheduled until 1994, it had "more than adequate time" in which to develop a plan. Id. at 173a. The Board engaged Joiner to draft a redistricting plan, which he estimated would take 200 to 250 hours, far longer than would be needed simply to duplicate the Police Jury plan. Id. at 125a, 173a. On September 5, 1991, Joiner presented the already-precleared Police Jury plan to the Board, along with precinct maps (be-

cause, Joiner explained, the Board would have to work with the Police Jury to alter precinct lines for its own plan). Id. at 174a. But despite a proposal by Board Member Tom Myrick (who would have benefitted from the Police Jury Plan because it preserved his district, which was majority-white but contained the largest concentration of black voters under the preexisting plan), the Board did not at that time adopt the Police

Jury plan. Ibid.

The Board's decision not to adopt the Police Jury plan reflected the fact that the two bodies have different functions and priorities. Police Juries "are concerned with road maintenance, drainage, and in some cases garbage collection, and the level of demand for such services in each district is a concern. School board members, by contrast, are typically concerned with having a public school or schools in each district." J.S. App. 151a. The district lines in the Police Jury plan. however, were not drawn with school locations in mind. Id. at 191a. Also, the Police Jury plan did not correspond to the distribution of Board incumbents; if adopted by the Board, the Police Jury plan would have paired Board incumbents against each other in two districts and would have created two other districts with no incumbent. Id. at 181a.

Beginning in March 1992, appellant-intervenor George Price, president of the local chapter of the NAACP, wrote to the Board to point out that there was no minority representation on the Board, and requested that he be included in the Board's redistricting process. The Board did not respond to those requests. J.S. App. 175a-176a. In August 1992, Joiner met privately with Board members and showed them various computergenerated alternative scenarios, none of which contained a majority-black district. *Id.* at 176a. Also in

August 1992, at a time when no other plan had been publicly released, Price presented Joiner with a partial plan, containing two majority-black districts, that had been developed by the NAACP. Joiner told Price the Board would not consider a plan that did not include the other ten districts. J.A. 175-176; J.S. App. 177a-178a.

At a Board meeting held on September 3, 1992, Price presented a new NAACP plan that depicted all 12 districts and included two majority-black districts. J.S. App. 177a-178a. The Board refused to consider Price's new plan, ostensibly because "the [NAACP] plan's district lines crossed existing precinct lines, and therefore violated state law." Id. at 178a-179a. The Board, its cartographer, and its attorney knew at the time, however, that the Board was not legally precluded from considering a plan that would cross existing precinct lines. Id. at 179a. Although state law prohibits school boards themselves from splitting precincts, id. at 149a, school boards may and do "request precinct changes from the Police Jury necessary to accomplish their redistricting goals," id. at 151a. The Board had long been aware of a possible need to split precincts in fashioning its redistricting plan, for Joiner had explained at the start of the redistricting process that it would have to work with the Police Jury to do so, and had given the Board precinct maps. Id. at 174a.

At the next Board meeting on September 17, 1992, only two weeks after Price had presented the NAACP plan, the Board unanimously passed a motion of intent to adopt the Police Jury plan that it had initially found unsatisfactory. J.S. App. 180a. On September 18, 1992, Price and others sent a letter urging the Board to use the NAACP plan as a basis for drawing majority-black districts. J.A. 193-194. The Board's action to adopt the Police Jury plan precipitated overflow citizen atten-

dance at a Board hearing on September 24, 1992, and many citizens, white and black, vocally opposed the plan. Price explained to the Board that, in light of the NAACP plan demonstrating the feasibility of drawing majority-black districts, the Department of Justice's preclearance of the Police Jury plan did not guarantee its preclearance for Board elections. The Board nevertheless adopted the Police Jury plan at its next meeting on October 1, 1992. J.S. App. 180a-181a.

The Board submitted the 1992 plan to the Attorney General for preclearance. On August 30, 1993, the Attorney General interposed an objection to the Board's plan, citing new information that had not been provided when the Police Jury submitted the same plan, such as the demonstrated feasibility of majority-black districts and the Board's refusal to engage in efforts to accommodate the concerns of the black community. J.S. App.

233a-237a.

4. On July 8, 1994, the Board filed a declaratory judgment action in the United States District Court for the District of Columbia, seeking preclearance of its 1992 election plan. The government opposed preclearance, arguing that the Board had not shown an absence of discriminatory purpose on its part, and also that the plan would "result[] in a denial or abridgment of the right \* \* \* to vote on account of race or color," in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973. The government did not argue, however, that the 1992 plan had either the purpose or effect of making the position of blacks worse than before it was enacted. See J.S. App. 88a, 221a.

On November 2, 1995, a divided three-judge district court granted preclearance. J.S. App. 78a-144a. The court first held that a redistricting plan may not be denied preclearance solely on the basis that the new plan

would violate Section 2. Id. at 89a-102a. The court also ruled that the Board, in adopting the Police Jury plan, did not have a racially discriminatory purpose that would bar preclearance. Id. at 102a-114a. In reaching that conclusion, the court acknowledged that the Board had "offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons." Id. at 106a n.15 (noting that Board had contended that the plan was designed to comply with Shaw v. Reno, 509 U.S. 630 (1993), which had not yet been decided when the 1992 plan was adopted). The court nonetheless found "legitimate, non-discriminatory motives" for the Board's decision: "The Police Jury plan offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing)." J.S. App. 106a.

Judge Kessler concurred in part and dissented in part, and would have denied preclearance. J.S. App. 115a-144a. Although she agreed with the majority that a Section 2 violation does not per se prevent Section 5 preclearance, she dissented from the majority's conclusion that the Board had satisfied its burden to show the absence of a discriminatory purpose in its adoption of the plan. Id. at 115a-116a. Taking into account evidence that, she maintained, was relevant to the intent analysis under Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266 (1977), she found that "the evidence demonstrates conclusively that [the Board] acted with discriminatory

purpose." J.S. App. 117a-118a.

5. The government appealed to this Court, and argued that a voting change may not be precleared under Section 5 if the change would violate Section 2, and that the district court erred in its purpose analysis. This Court disagreed with the government on the first point

and held, in agreement with the district court, that a voting change may not be denied preclearance under Section 5 solely because the change would "result" in a denial or abridgment of the right to vote, in violation of Section 2. J.S. App. 33a-45a. The Court explained that "a plan has an impermissible 'effect' under § 5 only if it 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 35a (quoting *Beer* v. *United States*, 425 U.S. 130, 141 (1976)).

The Court also held, however, that evidence that a voting change would dilute minority voting strength is relevant to whether that change has a discriminatory purpose, and therefore should be denied preclearance. J.S. App. 45a-51a. The Court stated that, even if the only discriminatory purpose that requires denial of preclearance under Section 5 is a retrogressive purpose, i.e., an intent to make the position of minorities worse than before, evidence of vote dilution is relevant to that analysis. Id. at 47a. The Court remanded the case to the district court for further consideration as to whether the Board had a discriminatory purpose in adopting the 1992 plan. Id. at 50a-51a. In remanding the case, the Court "[left] open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent," and stated that the existence of a "non-retrogressive, but nevertheless discriminatory, purpose," and "its relevance to § 5, are issues to be decided on remand." Id. at 45a-46a.3

<sup>&</sup>lt;sup>3</sup> In separate opinions, Justice Breyer, joined by Justice Ginsburg, and Justice Stevens, joined by Justice Souter, concluded that the purpose inquiry under Section 5 extends beyond the search for retrogressive intent, and "includes the purpose of unconstitu-

6. On remand, the parties rested on the original record. J.S. App. 1a. The government argued that a voting change may not be precleared if it was enacted with a discriminatory (albeit not necessarily retrogressive) purpose, and that the evidence showed that the Board had adopted the 1992 plan with the discriminatory purpose of perpetuating the dilution of blacks' voting strength in Bossier Parish. The district court, again divided, again precleared the Board's plan. *Id.* at 1a-28a.

As to whether Section 5 requires denial of preclearance of a plan enacted with a discriminatory but nonretrogressive purpose, the majority stated, "We are not certain whether or not we have been invited to answer the question the Court left for another day, but we decline to do so in this case." J.S. App. 3a. The majority also remarked that the record in this case "will not support a conclusion that extends beyond the presence or absence of retrogressive intent." Ibid. Although the majority remarked that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory purpose," it stated that "those imagined facts are not present here." Id. at 3a-4a. Thus, the majority proceeded to analyze only whether the Board had enacted the plan with an intent to retrogress. It did not examine whether the evidence demonstrated that the Board had enacted the plan with the unconstitutional purpose of maintaining an electoral system that dilutes the votes of blacks in the Parish, nor did it apply the Arlington Heights framework to

tionally diluting minority voting strength." J.S. App. 56a (Breyer, J., concurring in part and concurring in the judgment); id. at 76a (Stevens, J., dissenting in part and concurring in part) (agreeing with Justice Breyer on that point).

analyze evidence of such a purpose to dilute blacks' votes.

The district court adhered to its previous view that the Board's adoption of the Police Jury plan was supported by two "legitimate, non-discriminatory motives": the Board's belief that the plan would be easily precleared (because it had already been precleared by the Attorney General for use in Police Jury elections) and its "focus on the fact that the Jury plan would not require precinct splitting, while the NAACP plan would." J.S. App. 5a. Those two motives, the court concluded, were sufficient to establish a "prima facie"

case for preclearance." Ibid.

The majority then considered, under the rubric of Arlington Heights, supra, factors that might be relevant to establish the Board's retrogressive intent. First, it considered whether there was evidence that the plan "bears more heavily on one race than another." J.S. App. 5a. It found that factor inconclusive, because, having limited its analysis to evidence of retrogressive intent, it could not find evidence that "the Jury plan bears more heavily on blacks than the pre-existing plan," ibid. (emphasis added); even if the 1992 plan was dilutive of black voting strength, it was no more dilutive than the previous plan, id. at 5a-6a. As for the historical background to the Board's adoption of the 1992 plan, the court acknowledged that there was "powerful support for the proposition that [the Board] in fact resisted adopting a redistricting plan that would have created majority black districts," including the Board's history of resistance to school desegregation (particularly its refusal to obey a district court order to maintain a biracial committee to study ways to attain a unitary school system). Id. at 6a-7a. But, the court stressed, all that history proved only "a tenacious determination to maintain the status quo. It is not enough to rebut the School Board's prima facie showing that it did not intend retrogression." Id. at 7a. Similarly, the sequence of events leading up to the adoption of the plan "does tend to demonstrate the school board's resistance to the NAACP plan," and evidence of the Board's deviation from its normal practices "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise," but nei-

ther established retrogressive intent. Ibid.

Judge Kessler again dissented. J.S. App. 12a-27a. She again concluded that "the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose," id. at 12a, and that the Board's "proffered reasons for acceptance of the Police Jury plan are clearly pretextual," id. at 15a. She agreed with the government that the existence of a discriminatory, albeit nonretrogressive, purpose requires denial of preclearance under Section 5; otherwise, "we would commit ourselves to granting § 5 preclearance to a 'resistant' jurisdiction's nonretrogressive plan even if the record demonstrated an intent by that jurisdiction to perpetuate an historically discriminatory status quo by diluting minority voting strength." Id. at After reviewing evidence of vote dilution in Bossier Parish, Judge Kessler concluded, "[i]t would be impossible to ignore the weight and the relevance of this § 2 evidence to the School Board's intent to dilute the voting strength of blacks in Bossier Parish." Id. at 22a-23a. And she reiterated her previous conclusion. based on applying the Arlington Heights framework to the facts of this case, that "the only conclusion that can be drawn from the evidence is that [appellee] acted

with discriminatory purpose." Id. at 23a (brackets omitted).

### SUMMARY OF ARGUMENT

A. Section 5 of the Voting Rights Act of 1965 prohibits a covered jurisdiction from implementing a new voting practice unless the jurisdiction establishes that the new practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. The "purpose" prong of Section 5 requires the courts to decide whether a voting change has a discriminatory purpose, not merely whether it has a retrogressive purpose. The language of the statute refers simply to a purpose to deny or abridge the right to vote on account of race, and makes no reference to an intent to make the position of minorities worse. The background to Section 5 also makes clear that Congress enacted that provision to prevent covered jurisdictions from implementing voting changes denying and abridging minorities' voting rights in violation of the Constitution, whether or not they are retrogressive. Congress enacted Section 5 because its previous approach to unconstitutional racial discrimination in voting practices, requiring case-by-case litigation to enjoin particular practices, had proven inadequate; Congress found that offending jurisdictions simply replaced one voting practice declared by the courts to be discriminatory with another intended to accomplish the same result. If Section 5 were limited to voting changes with a retrogressive intent, then a jurisdiction could replace one unconstitutionally discriminatory voting practice with another having precisely the same purpose and effect. It is implausible that Congress intended to require either the Attorney General or this Court to give such

approval to unconstitutional, racially discriminatory

voting practices.

This Court's previous decisions regarding Section 5 support a construction that precludes enforcement of all voting changes enacted with a racially discriminatory purpose. The Court has explained that, even when a voting change has an effect that does not preclude preclearance, the change should nonetheless be barred if it was enacted with a discriminatory purpose, because official actions taken with a racially discriminatory purpose have no legitimacy under the Constitution. Thus, if a change is enacted with the purpose to dilute the votes of minorities, it should be denied preclearance, even if it is not retrogressive. Although the Court has construed the "effect" prong of Section 5 to be limited to retrogression, that construction reflects concerns about the potential reach of a provision that opens official action to challenge because of discriminatory effects alone, and has little relevance to official action with a racially discriminatory motivation. This construction of Section 5's "purpose" prong is also supported by the Attorney General's longstanding and consistent practice in administering the statute, which is entitled to deference.

B. Appellee's 1992 redistricting plan should be denied preclearance because it had the unconstitutional purpose of diluting the voting strength of black voters in Bossier Parish. Properly analyzed in light of the factors set forth in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), the evidence establishes appellee's discriminatory intent. There is both a long and a recent history of racial discrimination against blacks in Bossier Parish, including and especially discrimination by the School Board. The facts leading up to the adoption of the plan

persuasively show invidious intent. The Board originally had little interest in the Police Jury plan because that plan interfered with its traditional districting goals, and intended to adopt an entirely different plan; it turned to the Police Jury plan only after black voters in the Parish began to insist on a plan that would create a majority-black district. The record establishes that the Police Jury plan had the effect of perpetuating the dilution of blacks' voting strength in the Parish. Statements by School Board members also indicate the Board was hostile to black representation on the Board. The district court indeed acknowledged that the Board did not welcome improvement in the political position of blacks in the Parish, and that the Board was motivated to adopt the plan by a "tenacious determination" to maintain the status quo (J.S. App. 7a)—a status quo in which, appellee has conceded, blacks' votes are diluted.

In examining appellee's purpose, the district court erroneously confined its analysis of the evidence under the Arlington Heights framework to determining whether the plan had a retrogressive purpose. Thus, to the extent the district court may have addressed the plan's discriminatory (but not retrogressive) purpose, its analysis was legally insufficient, for it failed to apply Arlington Heights to determine whether the plan had a discriminatory purpose. Similarly, any conclusion by the district court that appellee adopted the plan for legitimate reasons could not be sustained on appeal because of the lower court's erroneous truncation of its analysis. The record shows in any event that appellee's justifications for its plan are pretextual. Moreover. because appellee must show the absence of a discriminatory purpose to its 1992 plan, preclearance should be denied because the evidence shows that the

plan did have a discriminatory purpose, even if there might also be legitimate justifications for the plan.

### ARGUMENT

BECAUSE BOSSIER PARISH SCHOOL BOARD'S 1992 REDISTRICTING PLAN WAS ENACTED WITH AN UNCONSTITUTIONAL, RACIALLY DISCRIMI-NATORY PURPOSE, THE DISTRICT COURT ERRED IN PRECLEARING THAT PLAN

- A. Section 5 Of The Voting Rights Act of 1965 Bars Preclearance Of A Voting Change Enacted With An Unconstitutional, Racially Discriminatory Purpose, Whether Or Not The Change Was Also Intended To Make The Position Of Minorities Worse Than Before The Change Was Enacted
- Congress Intended Section 5 To Bar Implementation Of Unconstitutional Voting Changes Enacted By Covered Jurisdictions

Section 5 bars the implementation of a covered jurisdiction's voting change unless the jurisdiction establishes that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. A "purpose \* \* \* of \* \* \* abridging the right to vote on account of race" includes any purpose to limit the voting power of minorities, including the purpose to implement and perpetuate a regime because it dilutes the votes of racial minorities. See Allen v. State Bd. of Elections, 393 U.S. 544, 569 (1969) (explaining that Section 5 requires preclearance review even when covered jurisdiction does not bar minorities from voting, because "[t]he right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot"); Georgia v. United States, 411 U.S. 526, 534 (1973) (Section 5 requires preclearance review of redistricting plans because of potential for dilution of minorities' votes); cf. Rogers v. Lodge, 458 U.S. 613, 617 (1982) (upholding Fourteenth Amendment intentional vote-dilution challenge to county's at-

large election system).

This interpretation is not only consistent with the plain language of the statute, but also it is necessary to effectuate the unambiguous intent of Congress in enacting Section 5 of the statute, in two respects. First, Congress clearly intended in Section 5 to prohibit the implementation of any new practice that violated the Constitution's prohibitions against racial discrimination in voting. Second, Congress enacted Section 5 for the specific purpose of preventing jurisdictions from substituting for one prohibited voting practice another voting practice designed to restore-but not necessarily to magnify—the discriminatory features of the prohibited law. Neither congressional purpose would be served by the construction of Section 5 proposed by appellee (Mot. to Aff. 19), limiting its reach to voting changes enacted with "retrogressive intent"-i.e., with the purpose of making the position of minorities worse than it was before the change.

Congress's overarching purpose in enacting and reenacting Section 5 was to enforce the Constitution's
prohibitions against purposeful racial discrimination in
voting. See South Carolina v. Katzenbach, 383 U.S.
301, 325-326 (1966); City of Rome v. United States, 446
U.S. 156, 173-178 (1980); S. Rep. No. 417, 97th Cong., 2d
Sess. 9-10 (1982). Indeed, Section 5 tracks the language
of the Fifteenth Amendment, which prohibits intentional racial discrimination in official voting practices.
Cf. U.S. Const. Amend. XV, § 1 ("The right of citizens
\* \* \* to vote shall not be denied or abridged \* \* \* on
account of race [or] color[.]"); Gomillion v. Lightfoot,

364 U.S. 339 (1960). If Section 5's purpose prong were limited to voting changes enacted with a retrogressive intent, then the federal courts (including this Court) and the Attorney General would be required to give approval to changes specifically intended to impair minorities' voting rights in violation of the Constitution, so long as the voting changes were not intended to (and did not) make the position of minorities worse. The background to Section 5 shows that such a construction

of Section 5 is implausible.

Congress enacted Section 5 for the specific purpose of stopping the practice of replacing one unconstitutional voting law with another. In the Civil Rights Act of 1957, Congress, to enforce the Fifteenth Amendment, had declared that all citizens otherwise qualified to vote should be entitled to vote "without distinction of race, color, or previous condition of servitude," 42 U.S.C. 1971(a) (1958), and had authorized the Attorney General to bring suit to prevent the deprivation of the right to vote on account of race, 42 U.S.C. 1971(c) (1958). The Justice Department's experience under the 1957 Act was that that statute's approach, requiring affirmative litigation by the federal government, accomplished little (and that only after great delay) because jurisdictions intent on impairing blacks' right to vote resisted voting rights litigation to the utmost. In particular, even after the federal government won final judgments enjoining jurisdictions from enforcing particular discriminatory tests, the jurisdictions simply switched to new devices in order to accomplish the same result. As Attorney General Katzenbach told a subcommittee of the House Judiciary Committee: "[T]he fact is that those who are determined to resist are able, even after apparent defeat in the courts, to devise whole new methods of discrimination. And often that means beginning the whole weary process all over again.™

Congress therefore determined "to shift the advantage of time and inertia from the perpetrators of the

<sup>&</sup>lt;sup>4</sup> Voting Rights: Hearings on H.R. 6400 Before Subcomm. No. 5 of the House Comm. on the Judiciary, 89th Cong., 1st Sess. 5 (1965) (1965 House Hearing); see also Voting Rights: Hearings on S. 1564 Before the Senate Comm. on the Judiciary, 89th Cong., 1st Sess. Pt. 1, at 11 (1965) (Attorney General Katzenbach, describing "second full-scale attempt to end discriminatory practices" in Selma); H.R. Rep. No. 439, 89th Cong., 1st Sess. 10 (1965) ("Indeed, even after apparent defeat resisters seek new ways and means of discriminating. Barring one contrivance too often has caused no change in result, only in methods."); S. Rep. No. 162, 89th Cong., 1st Sess. Pt. 3, at 7-9 (1965) (joint views of 12 members of Senate Judiciary Committee, ascribing inadequacy of 1957 Act to "intransigence of local officials and dilatory tactics" used in voting rights litigation); H.R. Rep. No. 397, 91st Cong., 1st Sess. 2 (1969) (because of "State and local intransigence and delays in the judicial process," earlier legislation "yielded insignificant gains"); S. Rep. No. 417, supra, at 5 (before 1965, "case-by-case litigation proved wholly inadequate," for "[b]y the time a court enjoined one scheme, the election had often taken place, local officials had devised a new scheme, or both"); South Carolina, 383 U.S. at 309-315 (reviewing evidence before Congress about ineffectiveness of litigation under 1957 Act); Perkins v. Matthews, 400 U.S. 379, 396 & n.13 (1971) (similar); United States v. Mississippi, 229 F. Supp. 925, 995-997 (S.D. Miss. 1964) (Brown, J., dissenting) (describing Mississippi's response to previous litigation), rev'd, 380 U.S. 128 (1965); United States v. Louisiana, 225 F. Supp. 353, 392-393 (E.D. La. 1963) (Wisdom, J.) (noting Louisiana had adopted a "good citizenship" test in case its test of understanding state constitution was invalidated), aff'd, 380 U.S. 145 (1965); United States v. Penton, 212 F. Supp. 193, 201-202 (M.D. Ala. 1962) (Johnson, J.) ("In spite of [two] prior judicial declarations," Alabama "continues in the belief that some contrivance may be successfully adopted and practiced for the purpose of' depriving blacks of franchise); David J. Garrow, Protest at Selma 12-29 (1978) (reviewing historical evidence showing ineffectiveness of 1957 Act).

evil to its victims." South Carolina, 383 U.S. at 328. It did so by "suspend[ing] new voting regulations [in covered jurisdictions] pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment." Id. at 334. Under appellee's view of Section 5, however, if the Justice Department successfully sued to enjoin enforcement of a covered jurisdiction's racially discriminatory voting practice as violative of the Fifteenth Amendment, and the jurisdiction then responded with a different practice that was intended to have, and did have, precisely the same (or a slightly less) invidious effect on blacks' voting rights in violation of the Fifteenth Amendment, then the Attorney General would be required to preclear that new practice.

Nothing in the legislative background to Section 5 suggests that Congress anticipated or desired that the Attorney General preclear newly adopted voting practices that violated the Constitution as long as the new practices were intended merely to hold the line against additional black registration or participation in elections. To the contrary, as the Court explained in South Carolina, Section 5 requires "the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination." 383 U.S. at 316 (emphasis added); see id. at 335 (Congress intended Section 5 to

<sup>&</sup>lt;sup>5</sup> See also H.R. Rep. No. 439, supra, at 26 (covered jurisdiction must show that new practice "does not have the purpose and will not have the effect of denying or abridging rights guaranteed by the 15th amendment"); S. Rep. No. 162, supra, at 24 (same); 1965 House Hearing, supra, at 90 (Attorney General Katzenbach, explaining that, under Section 5, voting changes could be precleared quickly "if there was no reason to believe that those laws were in violation of the 15th amendment").

prohibit jurisdictions from "contriving new rules of various kinds for the sole purpose of perpetuating vot-

ing discrimination") (emphasis added).

Furthermore, when Congress reenacted Section 5 in 1970 and 1982, the relevant committees explained that Section 5 review continued to be necessary to prevent the perpetuation and maintenance of voting discrimination through adoption of new voting regulations.6 Indeed, one of Congress's specific concerns when it reenacted Section 5 was that covered jurisdictions that had previously prevented blacks from voting entirely had switched to more subtle methods of abridging minorities' voting rights, such as vote dilution through redistricting plans. Congress retained the preclearance requirement to ensure federal review of cases in which covered jurisdictions abandoned blunt denials of minorities' right to vote in favor of permitting minorities to register and vote but intentionally diluting the value of their vote—a shift that may not be retrogressive but is unquestionably discriminatory and unconstitutional.8 This shift would have come as no surprise to the Con-

<sup>&</sup>lt;sup>6</sup> See H.R. Rep. No. 397, supra, at 7; S. Rep. No. 417, supra, at 14.

<sup>&</sup>lt;sup>7</sup> See H.R. Rep. No. 397, supra, at 7; 116 Cong. Rec. 5521 (1970) (joint statement by members of Senate Judiciary Committee); H.R. Rep. No. 196, 94th Cong., 1st Sess. 10 (1975); S. Rep. No. 295, 94th Cong., 1st Sess. 18 (1975); H.R. Rep. No. 227, 97th Cong., 1st Sess. 6 (1981); S. Rep. No. 417, supra, at 6, 7 & n.8, 10-12.

<sup>&</sup>lt;sup>8</sup> The Court has not definitively resolved whether intentional racial vote dilution violates the Fifteenth Amendment as well as the Fourteenth Amendment. See *Voinovich* v. *Quilter*, 507 U.S. 146, 159 (1993). When Congress reenacted Section 5, it made clear that the Act covers racially motivated voting changes, including intentional vote dilution, that violate the Fourteenth Amendment. See S. Rep. No. 417, *supra*, at 9-10 & n.19.

gress that enacted Section 5, for it knew that jurisdictions covered by the Act had resorted to "extraordinary stratagem[s]" to resist black enfranchisement in the past and had reason to suppose that they would "try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself." South Carolina, 383 U.S. at 335.

Thus, although there has been disagreement over "how far beyond the Constitution's requirements Congress intended [Section 5] to reach," neither Congress nor this Court has ever expressed doubt that Section 5's prohibition of discriminatory voting changes was intended "to reach as far as the Constitution itself." J.S. App. 57a (Breyer, J., concurring). To hold that the Attorney General and the courts must preclear voting changes enacted with a racially discriminatory (but not retrogressive) purpose would be to conclude that Section 5—the federal government's principal weapon in its arsenal against racial discrimination in voting —cannot reach what Congress understood to be its principal target: the perpetuation of intentional racial discrimination in voting that violates the Constitution.

- This Court Has Construed Section 5 To Bar Voting Changes With A Discriminatory, But Not Retrogressive, Purpose
- a. This Court has consistently held that a voting change enacted with the intent to discriminate against minorities must be denied preclearance under Section 5, whether or not the covered jurisdiction acted with a retrogressive intent. Most recently, in City of Pleasant Grove v. United States, 479 U.S. 462 (1987), the Court denied preclearance to the annexation, by a city with an all-white population, of two parcels of land, one vacant and one inhabited only by a few white residents. The

Court affirmed the district court's ruling that the City of Pleasant Grove had failed to show that its annexations were untainted by a discriminatory purpose, id. at 469, even though it was agreed that the change could not possibly have been retrogressive of the position of black voters in the City at the time of the annexation, since there were no such black voters there. id. at 470-471. The Court squarely rejected the contention that "an impermissible purpose under § 5 can relate only to present circumstances," id. at 471, and affirmed the denial of preclearance on the basis of the City's "impermissible purpose of minimizing future black voting strength," id. at 471-472. "One means of thwarting this process [of black political empowerment]," the Court noted, "is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance. This is just as impermissible a purpose as the dilution of present black voting strength." Id. at 472. In reaching that conclusion, the Court rejected the argument, advanced in dissent, that, "for a city to have a discriminatory purpose within the meaning of the Voting Rights Act, it must intend its action to have a retrogressive effect on the voting rights of blacks." Id. at 474 (Powell, J., dissenting); see id. at 471 n.11 (opinion of the Court, rejecting dissent's position).9

<sup>&</sup>lt;sup>9</sup> Although the dissent in City of Pleasant Grove suggested that, "for a city to have a discriminatory purpose within the meaning of the Voting Rights Act, it must intend its action to have a retrogressive effect on the voting rights of blacks," 479 U.S. at 474, the principal point of the dissent was that the annexation of land by an all-white town could not, by definition, have been intended to have any effect on black voters, since there were no such black voters. The dissent took issue with what it stated to be the Court's reliance on the possibility that black voters might move

Similarly, in City of Richmond v. United States, 422 U.S. 358 (1975), the Court ruled that, if an annexation plan was motivated by a discriminatory purpose, it must be denied preclearance, even if the plan does not have a prohibited discriminatory effect on minorities' franchise. Although the Court concluded in that case that the annexation plan at issue did not have a prohibited effect on the position of minorities, it made clear the inquiry could not stop at that point, because the district court had found the annexation plan "was

into the town in the future, suggesting that "such speculation in finding a discriminatory purpose on the part of a state actor is illogical and unprecedented." Id. at 476; see id. at 476-477 ("Where an annexation's effect on voting rights is purely hypothetical, an inference that the city acted with a motivation related to voting rights is unsupportable."). The harm to minority voting rights in this case obviously cannot be considered speculative or hypothetical, since blacks live and vote in Bossier Parish, and the record amply supports a conclusion that the 1992 plan dilutes their votes. See pp. 38-40, infra; C.A. No. 94-1495 Appellee Br. 21 (filed Oct. 23, 1997) (conceding on remand that "the [1992] School plan did dilute black voting strength"); J.S. App. 118a-119a (Kessler, J., dissenting) (concluding that the 1992 plan "effectively prevents black voters from electing candidates of their choice to the School Board").

The dissent in City of Pleasant Grove also cited City of Lockhart v. United States, 460 U.S. 125 (1983), for its analysis of the purpose prong of Section 5. In City of Lockhart, however, the Court had no occasion to consider the purpose prong of Section 5; because the district court in that case had denied preclearance under Section 5's effect test alone, "it was unnecessary for the District Court to reach the issue of discriminatory purpose." Id. at 130 & n.4; see id. at 133 (addressing whether city's new charter had "the effect of denying or abridging the right to vote guaranteed by § 5"). Since the Court remanded the case to the district court for further proceedings, id. at 136, it evidently anticipated that the district court would address the issue of purpose on remand.

infected by the impermissible purpose of denying the right to vote based on race through perpetuating white majority power to exclude Negroes from office through at-large elections." Id. at 373. The Court remanded for further proceedings on the issue of the City of Richmond's intent, and it stressed that, even though the ultimate effect of the annexation might have been permissible, nonetheless "[a]n official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color." Id. at 378; see also City of Port Arthur v. United States, 459 U.S. 159, 168 (1982) (relying on City of Richmond to hold that, even if electoral scheme might reflect political strength of a minority group and therefore pass "effect" test, "the plan would nevertheless be invalid if adopted for racially discriminatory purposes").

This Court's summary affirmance of the district court's denial of preclearance in Busbee v. Smith, 549 F. Supp. 494, 516 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983), also holds that a voting change must be denied preclearance if it was enacted with a discriminatory purpose, even if that purpose was not necessarily retrogressive. The redistricting plan at issue in Busbee was concededly not retrogressive in effect, and in fact it increased black voting strength somewhat. Id. at 516. The district court, however, relying upon evidence of Georgia's intent to avoid the creation of a majority-black district in the Atlanta area, denied Section 5 preclearance. Id. at 516-518. The court explained that the redistricting plan was "being denied Section 5 preclearance because State officials successfully implemented a

scheme designed to minimize black voting strength to the extent possible, [and] the plan drawing process was not free of racially discriminatory purpose." *Id.* at 518. It therefore denied preclearance squarely on a finding that Georgia had acted with a discriminatory, but not

retrogressive, intent.

In its appeal from the district court's judgment, Georgia included the following question in its jurisdictional statement: "Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level ! black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act." J.S. at i, Busbee v. Smith, 459 U.S. 1166 (1983); see id. at 22. In response, the government noted that "[t]he core of [the State's] argument is that the only discriminatory purpose that violates Section 5 is a purpose to retrogression," and argued that this reading of Section 5 was foreclosed by City of Richmond, supra. See Gov't Mot. to Aff. at 4-6, Busbee v. Smith, supra. Thus, this Court's summary affirmance in Busbee necessarily rejected the contention that a voting plan enacted with a nonretrogressive, yet discriminatory, purpose may be precleared.

In addition, in *Beer* v. *United States*, 425 U.S. 130, 141 (1976), the Court stated that even an ameliorative election plan can violate Section 5 if it "so discriminates on the basis of race or color as to violate the Constitution"; see also *id.* at 142 n.14 (noting that "[i]t is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional"). Appellee acknowledges that

Beer "suggests that any changes that violate the Constitution also violate Section 5." Mot. to Aff. 24 (internal quotation marks omitted). Congress has reached the same conclusion, for that part of Beer was expressly noted with approval in the definitive Senate Report accompanying Congress's 1982 extension of Section 5 without change. See S. Rep. No. 417, supra, at 12 n.31; see also Thornburg v. Gingles, 478 U.S. 30, 43 n.7 (1986) (noting that the Senate Report is the "authoritative source" of the legislative history for the 1982 extension of the Act). Congress's reenactment of Section 5 without changing its applicable standard amounts to a codification of the Court's reading of Section 5 in Beer. 10

b. Appellee has argued (Mot. to Aff. 21) that, because the Court in *Beer* limited the "effect" prong of Section 5 to retrogressive effects, the "purpose" prong must necessarily be limited to an intent to cause retrogression. That argument, however, overlooks both the function played by the effect prong of Section 5 and many of the concerns that animated the Court's construction of it in *Beer*.

Report expressly approved the Court's discussion of "purpose" in Beer, but it argues that the Court rejected reliance on the same Senate Report on the prior appeal in this case (see J.S. App. 42a). On the prior appeal, the Court concluded that one aspect of the Senate Report was unreliable as an indicator of congressional intent because it was contrary to the Court's earlier construction of Section 5 in Beer, the Court expressed doubt that, when Congress reenacted Section 5 without change, it would have silently disapproved the Court's decision in Beer without amending the statutory language. Ibid. The issue on this appeal, however, involves Congress's approval of a different part of the Court's decision in Beer, which deserves great weight.

As this Court explained in City of Rome, Congress in Section 5 prohibited the implementation of voting changes that have a retrogressive effect, even if they do not violate the Constitution itself, because for many years the covered jurisdictions had imposed devices to effect voting discrimination, and had successfully impeded the ability of racial minorities to exercise the electoral franchise effectively. See 446 U.S. at 176. A nonretrogression principle was necessary to ensure that further voting changes did not retard minorities' progress in overcoming that past discrimination. See id. at 177-178; see also South Carolina, 383 U.S. at 334 (suspension of tests and devices necessary to remedy past discrimination because they could "freeze the effect of past discrimination"); Lopez v. Monterey County, 119 S. Ct. 693, 703 (1999) (reaffirming that "the Act may guard against both discriminatory animus and the potentially harmful effect of neutral laws" in a covered jurisdiction).

The Court has also recognized, however, that allowing a voting practice (or, indeed, any official action) to be subject to challenge solely because it has a discriminatory effect has implications that are potentially very broad. In Beer, for example, the Court noted that the district court had applied the concept of "discriminatory effect" to rule, in effect, that blacks were entitled to proportional representation. See 425 U.S. at 136 & n.8. Indeed, in the same Term as Beer, the Court decided Washington v. Davis, 426 U.S. 229 (1976), which held that proof of discriminatory purpose is necessary to establish a violation of the Equal Protection Clause of the Fourteenth Amendment. In rejecting the contention that a discriminatory effect alone is sufficient to establish a constitutional violation, the Court emphasized in Davis that such a broad-ranging constitutional rule "would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." *Id.* at 248.

The same concerns, however, are not raised by a construction of Section 5 that prohibits enforcement of voting changes enacted with a purpose to discriminate against minorities. Such a rule does not preclude any voting practice per se; it simply requires that state actors not adopt practices with a discriminatory intent. Cf. Rogers, 458 U.S. at 617 (reaffirming that at-large voting systems are not unconstitutional per se, but also holding that they may not be used for the purpose of vote dilution).

The Court has also observed that Section 5-and in particular, its effect prong, which bars enforcement of many voting practices that are not actually unconstitutional—"imposes substantial federalism costs." Lopez, 119 S. Ct. at 703 (internal quotation marks omitted). Limiting Section 5's effect prong to cases of retrogression cabins those federalism costs substantially, for a construction of the statute's "discriminatory effect" provision not limited by the principle of retrogression might have substantially interfered with the States' ability to implement election laws that do not offend the Constitution. But there are far fewer federalism costs to a reading of Section 5 that precludes enforcement of voting practices motivated by intentional racial discrimination (even if that motivation is not retrogressive). Such practices violate the Constitution itself, and

therefore may not be legitimately enforced. The principal federalism costs imposed by Section 5 in a case of intentional racial discrimination involve the requirement of preclearance and the shifting of the burden of proof to the covered jurisdiction to show that the voting practice does not have a discriminatory purpose. But the Court long ago sustained those aspects of Section 5 as necessary to combat "persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in [such] lawsuits." South Carolina, 383 U.S. at 328; see Lopez, 119 S. Ct. at 703.

# 3. The Attorney General's Construction Of Section 5 Is Entitled To Deference

Finally, the Attorney General's construction of Section 5 as prohibiting preclearance of voting changes enacted with an unconstitutional discriminatory purpose (whether or not that purpose is retrogressive) is entitled to deference. The Attorney General has consistently followed that construction. In more than 30 years of enforcement of the Voting Rights Act, the Department of Justice has always read Section 5 to require covered jurisdictions to establish that their voting changes were enacted without an unconstitutionally discriminatory purpose, and it has never limited its purpose analysis on preclearance review to a search for

<sup>&</sup>lt;sup>11</sup> See City of Richmond, 422 U.S. at 378 (official action "taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution"); Arlington Heights, 429 U.S. at 265-266 ("When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.").

"retrogressive intent." The Attorney General's published procedures for Section 5 submissions do not even recognize the concept of "retrogressive intent," but rather make clear that "the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution." 28 C.F.R. 51.55(a). That longstanding and consistent construction of Section 5 by the Attorney General is entitled to "particular deference" in light of her "central role" in administering Section 5. See Dougherty County Bd. of Educ. v. White, 439 U.S. 32, 39 (1978); Lopez, 119 S. Ct. at 702.

- B. Bossier Parish School Board's 1992 Redistricting Plan Was Enacted With An Unconstitutional, Racially Discriminatory Purpose
- Proper Analysis Of The Board's Adoption Of The 1992 Plan Under The Arlington Heights Framework Shows That The Board Had A Discriminatory Purpose

Appellee has the burden to prove the absence of discriminatory purpose behind the 1992 plan. City of Rome, 446 U.S. at 183 n.18. The Court has instructed that, in analyzing "whether invidious discriminatory purpose was a motivating factor" for a voting change, courts should employ the framework of Arlington Heights, supra. See J.S. App. 48a; cf. Rogers, 458 U.S. at 618 (using same framework to evaluate claim of intentional vote dilution). That framework directs the courts to consider, in particular, whether the official ac-

<sup>&</sup>lt;sup>12</sup> The Attorney General has also consistently taken that position in litigation. See Gov't Mot. to Aff. at 5-6, Busbee, supra; U.S. Br. at 22-24, City of Pleasant Grove, supra.

tion "bears more heavily on one race than another"; the "historical background of the [jurisdiction's] decision"; the "specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence" and "substantive departures"; and "[t]he legislative or administrative history," especially "contemporary statements by members of the decisionmaking body." J.S. App. 49a; Arlington Heights, 429 U.S. at 266-268. Under that analysis, which was faithfully applied to this case by Judge Kessler (see J.S. App. 23a-26a, 117a-134a), "the only conclusion that can be drawn \* \* \* is that [appellee] acted with discriminatory purpose" (id. at 134a).

a. Historical Background. There is a welldocumented history of racial discrimination affecting blacks in Bossier Parish, including discrimination by the School Board, continuing into the present. As the parties stipulated (J.S. App. 210a-214a), before passage of the Voting Rights Act, Louisiana employed numerous tests and devices to prevent blacks from voting. The Attorney General in 1967 designated Bossier Parish for the appointment of federal voting examiners under Section 6 of the Act, and subsequently denied preclearance to a number of voting changes enacted by the state legislature because of their dilutive effect on black voting rights in the Parish. See id. at 214a-216a.13 In 1991, the Police Jury (which has never drawn a majority-black district) again adopted a districting plan with no majority-black district even though it was "obvious" at the time that at least one reasonably compact major-

<sup>&</sup>lt;sup>13</sup> In one case, a district court enjoined the use of multi-member districts in the Bossier Parish area for the state legislature, and referred to the plan as "gerrymandering in its grossest form."
J.S. App. 215a.

ity-black district could have been drawn, and yet members of the Police Jury told the public that no such district could be drawn. *Id.* at 146a-147a, 154a-155a, 161a-162a.<sup>14</sup>

With respect to the School Board in particular, even after the federal courts ordered the Board to dismantle its segregated school system (which survived Brown by over a decade), the Board resisted. The Board disregarded a court order to maintain a biracial committee to recommend ways to attain and maintain a unitary school system. J.S. App. 182a-183a. It also attempted to evade the desegregation order by segregating black children of personnel at the local Air Force Base and implementing an unconstitutional "freedom of choice" plan. The Board has reduced the percentage of the black teachers in the school district by a third (to less than 10% from 14% of the total), and has disproportionately assigned those teachers to schools with mostly black students. Schools in the Parish have also become increasingly segregated by race, despite the Board's affirmative duty to desegregate; in 1993-1994, four of the 16 regular elementary schools had predominantly black enrollment and five had student enrollments that were more than 80% white. Id. at 216a-218a.

This Court found a similar history of official discrimination, followed by resistance to improvement in the

The Police Jury plan in fact fragments well-established black communities bordering on the town of Benton and within Bossier City. J.A. 154-156. Further, some of the districts in the Police Jury plan are not compact, J.S. App. 191a; that plan also required the splitting of existing precincts, and was not the plan before the Police Jury with the fewest precinct splits. *Id.* at 167a-168a. The plan also departs from Louisiana law in that it lacks contiguity at one point and its population deviation exceeds plus or minus five percent. J.A. 233-235.

position of minorities, to be highly probative of discriminatory intent in Rogers, 458 U.S. at 622-626. In support of its holding, the Rogers Court cited such evidence as past voting discrimination, which contributed to low black voter registration, and a racially segregated school system. Id. at 625. The Court stressed that historical evidence of discrimination is particularly relevant when "the evidence shows that discriminatory practices were commonly utilized, that they were abandoned when enjoined by courts or made illegal by civil rights legislation, and that they were replaced by laws and practices which, though neutral on their face, serve to maintain the status quo." Ibid. That is the case here. Even the district court acknowledged that the Board had shown a "tenacious determination to maintain the status quo." J.S. App. 7a.

b. Sequence Of Events Leading Up To The Decision. Especially probative in this case is the sequence of events leading up to the Board's adoption of the Police Jury plan for its own purposes. That course of events convincingly demonstrates that, absent an intent to still black voters' efforts to obtain representation on the Board, appellee would not have adopted the Police Jury plan. When the Board first met with its cartographer (Gary Joiner) in May 1991, no one suggested adopting the plan that the Police Jury had just adopted, which is not surprising, since the Police Jury plan was unsuitable for the Board's priorities in districting-namely school locations and incumbency protection. J.S. App. 151a, 171a, 181a, 191a. At the May 1991 meeting, Joiner estimated that preparing a redistricting plan would take him 200-250 hours, id. at 173a, far longer than would be necessary to recycle the Police Jury plan.

When the Board met again with Joiner in September 1991, Joiner provided the Board with precinct maps because, he explained, the Board would need to work with the Police Jury to alter precinct lines for its own plan (which would have been unnecessary if the Board had intended to adopt the Police Jury plan). J.S. App. 174a. At that meeting, Board Member Myrick-who stood to benefit from the Police Jury plan because his district. which contained the largest concentration of black voters under the preexisting plan, would remain majoritywhite-suggested adopting that plan. The Board did not take that course. As appellee observed below. Board members "in redistricting fight savagely to keep their pet schools in their new districts," C.A. No. 94-1495 Appellee Br. 6 n.2 (filed Oct. 23, 1997), and "[s]ome of the [Board] members were unhappy with the Police Jury plan because their pet schools were situated outside their new districts," id. at 10-11.

Over the following year, Board members met privately with Joiner to discuss various redistricting scenarios. J.S. App. 125a-126a, 176a. Despite requests from the local branch of the NAACP to be included in the redistricting process, the Board gave no notice of such private meetings. Id. at 176a. Frustrate at the Board's unresponsiveness, the NAACP developed a plan showing two majority-black districts. Id. at 177a. After being told by Joiner that any proposed plan must include all 12 election districts, the NAACP presented such a plan with two majority-black districts on September 3, 1992. J.A. 175-176; J.S. App. 177a-178a.

Only then did the Board become roused to action. On September 17, 1992, "without any further consultation with its cartographer or attempt to address the concerns of the black community, the School Board passed a motion of intent to adopt the Police Jury plan, which had no majority-black districts." J.S. App. 127a. The Board found new favor in the Police Jury plan, even

though it pitted two pairs of Board incumbents against each other and did not allocate schools among the districts to Board members' satisfaction, in direct contradiction of the Board's traditional districting priorities. The Board adopted the Police Jury plan at its next meeting, even after a public hearing attended by an overflow crowd, at which not a single person spoke in favor of the plan. Ibid. As Judge Kessler observed. "[t]he fact that the Board adopted a plan which departs substantively from its earlier districting plans and which ignores factors it has usually considered of paramount concern, is probative of discriminatory purpose." Id. at 129a. Even the majority agreed that "felvidence in the record tending to establish that the board departed from its normal practices \* \* \* establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." Id. at 7a.15

c. Dilutive Impact Of The Plan. The record compiled in the district court amply establishes that the 1992 plan had a particularly adverse impact on black voters. In fact, appellee conceded on remand that "the

be highly probative of discriminatory intent. See Arlington Heights, 429 U.S. at 267 (explaining that departures from substantive considerations are relevant "particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached," and suggesting that, if in that case, the town had switched zoning classifications only when "[it] learned of [the developer]'s plans to erect integrated housing," that would have presented a "far different case"); S. Rep. No. 417, supra, at 10 (explaining that preclearance remedy continued to be necessary because jurisdictions were "depart[ing] from past practice as minority voting strength reaches new levels").

School plan did dilute black voting strength." C.A. No. 94-1495 Appellee Br. 21 (filed Oct. 23, 1997). The record corroborates that concession. Under Thornburg v. Gingles, supra, three factors are particularly relevant to establishing vote dilution: (1) the racial minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the group must be politically cohesive; and (3) the white majority must vote sufficiently as a bloc to usually defeat the minority's preferred candidate. 478 U.S. at 50-51. The record, including the parties' stipulations, established each part of the Gingles test. J.S. App. 154a-155a, 192a-194a, 196a-207a.

First, in 1990, black persons comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. J.S. App. 145a-146a. The black population of the Parish is concentrated in two areas: more than 50% of it lives in Bossier City, and the remaining black residents are concentrated in four identifiable populated areas in the northern rural portion of the Parish. *Id.* at 146a-147a. Contiguous, reasonably compact majority-black districts can be drawn in those areas using traditional redistricting features. *Id.* at 154a-155a, 192a-194a. 16

Second, the history of elections in the Parish showed both the black community's political cohesion and ra-

of facts establishing the potentially dilutive impact of the plan. Board members knew where the black population of the Parish lived; some of them explained the increasing racial segregation in the Parish's schools on the ground that predominantly black schools were located in predominantly black neighborhoods. J.A. 94-100, 104, 109-110, 113-124; see also J.S. App. 154a-155a (stipulation that it was "obvious" that majority-black district could have been drawn in Bossier City).

cially polarized voting, resulting in a pattern in which the majority, white voters, prevented the election of the black community's representatives to the Board. The presence of racially polarized voting was recognized in the community and among elected officials. See J.A. 70-71, 130, 132, 134, (testimony by Board Member Jerome Blunt, Police Juror Jerome Darby, Bossier City Councilmember Jeff Darby, and recognition in local press); J.S. App. 201a (Police Juror Burford's estimation that 80% of black and white voters chose candidates of their own race; stipulation that, "[t]o some extent, voting patterns in Bossier Parish are affected by racial preferences"). Before 1992, black candidates had run for the School Board on at least four occasions, but none had been elected. Id. at 195a-196a. Further, with few exceptions owing to unusual circumstances, black voters had also been unable to elect candidates of their choice to other political positions in the Parish. Id. at 196a-201a. Statistical analysis of elections in which black candidates ran against white candidates disclosed that many were affected by racial bloc voting, id. at 202a-207a, and that "African American voters are likely to have a realistic opportunity to elect candidates of their choice \* \* \* only in districts in which they constitute a majority of the voting age population." J.A. 174. Indeed, where black persons comprise 20% of the population, "it is sensible to expect" that at least some black representatives would have been elected to one of the Board's 12 single-member districts before the 1992 redistricting plan was adopted, and "the fact that none [had] ever been elected" is important evidence of purposeful discrimination. Rogers, 458 U.S. at 623-624.

d. Contemporaneous Statements. Finally, contemporary statements by members of the Board support a finding of discriminatory intent. Member Henry Burns

told one witness who testified at trial that, although he personally favored "having black representation on the board, other school board members oppose[d] the idea." J.S. App. 83a n.4. Member Barry Musgrove told appellant Price that "the Board was 'hostile' toward the idea of a black majority district." Ibid. Tom Myrick also told two of the intervenors, after a meeting at which black community representatives had raised concerns about unequal funding for computer purchases at predominantly black schools, that "we [the African Americans] were always trying to take his seat and \* \* \* he was not going to let us take it away from him." J.A. 212; see J.A. 182-183; J.S. App. 83a n.4. "[C]onsidered in the context of the School Board's discriminatory past, \* \* \* th[ose] statements add further proof of improper motive," and "it seems fair to conclude that at least some School Board Members were openly 'hostile' to black representation on the school board." Id. at 133a.

In sum, applying Arlington Heights to the record permits only one conclusion: when the Board adopted the Police Jury plan as its own redistricting plan, it acted with the unconstitutional, racially discriminatory purpose to deny black voters a fair opportunity to elect candidates of their choice to the School Board.

- 2. To The Extent The District Court May Have Ruled That The Board Acted Without A Discriminatory Purpose, That Conclusion Cannot Be Sustained
- a. Despite the impressive evidence showing that the Board acted with discriminatory intent in adopting its redistricting plan, appellee argues (Mot. to Aff. 15) that the district court actually found that the plan was free even of a discriminatory, but nonretrogressive purpose. That argument is based on two cursory sentences in the

district court's opinion on remand.<sup>17</sup> While the meaning of those sentences is decidedly uncertain, they are best read only as stating that the court would not decide whether appellee acted with a discriminatory intent, not that it decided that appellee had acted without a discriminatory intent. Indeed, just after those sentences, the lower court proceeded to explain that "[t]he question we will answer, accordingly, is whether the record disproves [appellee's] retrogressive intent in

adopting the [Police] Jury plan." J.S. App. 4a.

Moreover, to the extent the district court's opinion might be read as concluding that appellee had acted without any discriminatory intent, that conclusion cannot be sustained on appeal. This Court has admonished that "Idletermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," Arlington Heights, 429 U.S. at 266, and has set forth a framework for analyzing evidence of discriminatory intent, id. at 266-268; J.S. App. 48a-49a. The district court's comment about the existence vel non of a discriminatory purpose, however, was unaccompanied by any discussion of the Arlington Heights framework or any analysis of the evidence under it. As Judge Kessler pointed out, the majority discussed the Arlington Heights factors "only for the

been invited to answer the question the Court left for another day [i.e., whether a discriminatory but nonretrogressive purpose bars preclearance under Section 5], but we decline to do so in this case, because the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent. We can imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory purpose,' but those imagined facts are not present here." J.S. App. 3a-4a.

purpose of finding evidence of retrogressive intent." J.S. App. 24a (emphasis added). Thus, even when the majority did apply the Arlington Heights factors, it followed its findings establishing that the Board did not want blacks in the Parish to improve their voting strength with a statement that such evidence did not show intent to retrogress. See pp. 12-14, supra; J.S. App. 5a-8a. Because the lower court failed to apply the Arlington Heights factors to the broader question of discriminatory but nonretrogressive intent, any finding that it may have made on that point is not entitled to deference under the "clearly erroneous" rule of Federal Rule of Civil Procedure 52(a). See Schneiderman v. United States, 320 U.S. 118, 129-130 (1943) (declining to follow district court's findings because they were "but the most general conclusions of ultimate fact," and it was "impossible to tell from them upon what underlying facts the court relied, and whether proper statutory standards were observed"). 18

Furthermore, any conclusion that appellee's adoption of the plan was free of a discriminatory purpose would be manifestly contrary to the weight of the evidence, as well as the district court's own findings. The court readily acknowledged that appellee was motivated by a "tenacious determination to maintain the status quo."

<sup>&</sup>lt;sup>18</sup> See also Sanchez v. Colorado, 97 F.3d 1303, 1316 (10th Cir. 1996) ("Broad and general findings, not explicitly tethered to any particular testimony—especially in the [Voting Rights Act] context which demands penetrating case by case, fact bound analysis—simply do not provide the foundation for proper appellate review."), cert. denied, 520 U.S. 1229 (1997); Westwego Citizens for Better Gov't v. City of Westwego, 872 F.2d 1201, 1203-1204 (5th Cir. 1989) (district court's findings "manifestly inadequate" because they were "stated in conclusory fashion, with virtually no reference to the evidence presented at trial").

J.S. App. 7a. It also accepted that the record "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." Ibid. The lower court's previous decision in this case also recognized that the Board had initially disliked the Police Jury plan for valid reasons, and that it turned to that plan only after the redistricting process "began to cause agitation within the black community." Id. at 106a. Thus, while the district court characterized the 1992 plan as a "close port" available in a "storm," ibid., the "storm" was actually the Board's realization that the black community was seeking improvement in its political position, something the Board was determined to oppose.19 That determination to maintain a status quo that diluted the voting strength and minimized the political effectiveness of blacks in Bossier Parish is a discriminatory purpose in violation of the Constitution. See Rogers, 458 U.S. at 617.

b. In rejecting a finding of retrogressive intent, the district court suggested that appellee had advanced two

Indeed, it is difficult to see how adoption of the Police Jury plan could be justified as helping appellee avoid controversy. To the contrary, the facts show that adoption of that plan only exacerbated controversy. On September 17, 1992, the Board informed the public that it passed a motion of intent to adopt the Police Jury plan. On September 24, 1992, the black community protested the adoption of that plan, and the NAACP presented a petition with signatures of 500 people opposing the plan's adoption. On October 1, 1992, without considering alternative ways to draw a plan with even one majority-black district, the Board nonetheless approved the plan. J.S. App. 179a-181a. The "storm" that the Board was seeking to avoid was not an abstract controversy about redistricting, but rather increasing assertiveness by blacks in Bossier Parish about their voting rights.

"legitimate, non-discriminatory" explanations for choosing the Police Jury plan rather than the NAACP plan-"guaranteed preclearance" by the Attorney General and "easy implementation" (because no precinct lines would need redrawing under the Police Jury plan). J.S. App. 5a, 106a. The court's statement that those justifications were "legitimate" and "nondiscriminatory," however, was predicated on its erroneous truncation of its legal analysis to the issue of retrogressive intent, and therefore is not entitled to deference on appeal. See Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 501 (1984) ("Rule 52(a) does not inhibit an appellate court's power to correct a finding of fact that is predicated on a misunderstanding of the governing rule of law."). The record clearly demonstrates, moreover, that the proffered justifications were pretextual.

Appellee's hope for "guaranteed preclearance" of the 1992 plan is plainly insufficient, for once an alternative plan with majority-black districts was presented to it, the Board could not reasonably have believed that a plan which ameliorated the existing vote dilution would be less likely to receive preclearance than the Police Jury plan. The record also shows that guaranteed preclearance did not in fact induce the Board to adopt the Police Jury plan. Since the plan was precleared for Police Jury elections on July 29, 1991, the Board could have adopted it when it was first proposed on September 5, 1991, or anytime over the next year, yet it continued the process of developing another plan for more than a year. See pp. 6-8, supra. On the other hand, the Board had important reasons to enact a different plan, for the Police Jury plan did not protect the incumbencies of four Board members and was not drawn with school locations in mind. See pp. 6-7, supra.

Concerns over splitting precincts also did not motivate the Board to adopt the Police Jury plan. There is no evidence that the Board was concerned about preserving precincts before the black community began to request that a majority-black district be drawn. In fact, the Board had anticipated splitting precincts from the beginning of its redistricting process, in order to adopt a plan different from the Police Jury plan that would best serve its legitimate objectives (including preserving the seats of incumbents, a goal that was later sacrificed in the 1992 plan). J.S. App. 174a. The parties also stipulated that school boards may request that the Police Jury realign the Parish's precincts— a process that is both legal and common in Louisiana. Id. at 151a. But when the NAACP presented its plan with two majority-black districts, Joiner and the Bossier Parish district attorney asserted (contrary to their knowledge of state law) that the NAACP plan could not be considered because its district lines crossed existing precinct lines, and therefore, would violate state law. Id. at 179a.

Finally, even if the district court were correct that the Board's proffered reasons for its adoption of the 1992 plan were not pretextual, the court's decision to preclear the plan would still be erroneous as a matter of law, because the record and the court's own findings make clear that the Board also acted with a discriminatory intent in adopting the 1992 plan. A jurisdiction seeking preclearance of a voting change has the burden of proving the absence of discriminatory purpose on its part. City of Pleasant Grove, 479 U.S. at 469. Because the presence of a discriminatory purpose requires denial of preclearance, a jurisdiction's election plan is not entitled to preclearance if a discriminatory purpose significantly contributed to the adoption of the plan. The

fact that the jurisdiction may have had some legitimate reason for enacting the plan does not permit the court to ignore its discriminatory motivation in doing so. Cf. 42 U.S.C. 2000e-2(m) (Title VII is violated when race "was a motivating factor for any employment practice, even though other factors also motivated the practice").

#### CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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**MARCH 1999** 



### APPENDIX

1. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

SECTION 1. \* \* \* No State shall \* \* \* deny to any person within its jurisdiction the equal protection of the laws.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

2. The Fifteenth Amendment to the United States Constitution provides:

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

3. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, provides in pertinent part:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, \* \* \* such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory

judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure; Provided. That such qualification. prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.

\* \* \* \* \*

Supreme Court, U.S. F I I: E D

MAR 5 1999

CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

### BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

### JOINT APPENDIX (VOLUME 1)

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## XIII. Appellant-Intervenors' Trial Exhibits:



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 94cv1495

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, FEDERAL DEFENDANT,

GEORGE PRICE, AND NINE OTHERS INTERVENOR-DEFENDANT

#### DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
1994		
July 8	1	ORDER by Chief Judge John G. Penn: authorizing James J. Thornton, Jr. to appear in this Court in behalf of Bossier Parish for the sole and limited purpose of representing the School Board in its request for a declaratory judgment approving its redistricting plan as being in conformity with the Voting Rights Act of 1965 and the Constitution of the United States. (N) (jeb) [Entry date 07/14/94]

DATE	DOCKET NUMBER	PROCEEDINGS
July 8	2	COMPLAINT filed by plaintiff(s) BOSSIER PARISH (jeb) [Entry date 07/14/94]
July 8	-	SUMMONS(2) issued to federal party(s) defendant JANET RENO, and non-parties: U.S. Attorney and U.S. Attorney General. (jeb) [Entry date 07/14/94]
July 14	-	MAILED CJRA brochure, Meet and Confer list, and Notice regarding dismissal to plaintiff(s) BOSSIER PARISH. (jeb)
July 14	-	MAILED CJRA brochure, Meet and Confer list, and Notice regarding dismissal to plaintiff(s) BOSSIER PARISH. (jeb)
July 25	3	ORDER by Judge Charles R. Richey: directing Clerk of Court to make copies of the complaint and this order and provide them to the U.S. Marshals' Service for service of same upon the AUSA; directing AUSA to show cause why this case is cognizable in this Court and whether a three-ludge Court should be convered.
July 25	3	directing Clerk of Court to recopies of the complaint and this cand provide them to the Marshals' Service for service of supon the AUSA; directing AUS show cause why this case is cognitive.

### DOCKET NUMBER DATE PROCEEDINGS SHOW CAUSE issued to defendant July 26 JANET RENO (James Thornton, Office of Asst. Attorney General). (dbw) [Entry date 07/28/941 July 29 5 RESPONSE by defendant JANET RENO to Court's show cause order [4-1] (cip) [Entry date 08/03/94] Aug. 1 ORDER by Judge Charles R. Richey: 4 directing that pursuant to 42 USC 1973c, a Three Judge District Court shall be convened to hear and determine this action for declaratory judgment under Section of the Voting Rights Act of 1965, as amended; referring case to the Chief Judge of the USCA for appointment of the other two members of the three judge panel. (N) (jeb) Aug. 5 6 COPY of Order filed in USCA dated 8/4/94, designating Laurence H. Silberman, Circuit Judge, Gladys Kessler, District Judge, to serve with Charles R. Richey, District Judge, to hear and determine this action. (gt)

DATE	DOCE NUM	KET BER PROCEEDINGS
Aug. 5	-	CASE ASSIGNED to Three Judge Pane consisting of: District Judge Charles R Richey, Circuit Judge Laurence H Silberman and District Judge Gladys Kessler. (gt)
Aug. 11	7	RETURN OF SERVICE/ AFFIDAVIT executed upon Asst. U. S. Attorney General on 8/8/94 (lpp) [Entry date 08/17/94]
Aug. 11	8	RETURN OF SERVICE/AFFIDAVIT executed on 8/3/94 upon James J. Thornton, Esquire, pursuant to Court Order. (lpp) [Entry date 08/17/94]
Aug. 22		STATUS HEARING before Judge Charles R. Richey & Judge Gladys Kessler: discovery due 10/14/94; plaintiff's dispositive motions due 4:00 10/26/94; defendant and applicant intervenor defendant's response to dispositive motions due 4:00 11/9/94; plaintiff and defendant to file views on the aspect of the South Carolina Case due 8/24/94 by 4:00 p.m.; applicant intervenor defendant to file views on case on 8/26/94 by 4:00 p.m. Reporter: Frank Rangus (jeb)

DATE	DOCK NUM	
Aug. 22	9	MOTION filed by movant GEORGE PRICE and (9) nine others for leave to intervene Attachments (2), EXHIBIT: ANSWER (lpp) [Entry date 08/24/94]
Aug. 23	10	MEMORANDUM by defendant JANET RENO; attachments (5) (clv) [Entry date 08/25/94]
Aug. 23	11	TRANSCRIPT filed for date(s) of 08/22/94. Reporter: Frank Rangus (jeb) [Entry date 08/26/94] [Edit date 08/26/94]
Aug. 23	13	MEMORANDUM by defendant JANET RENO response to this Court's inquiry at the 8/22/94, status conference as to why this Court should not enter injunctive relief, Exhibit (A), Attachments (6) (lpp) [Entry date 08/30/94]
Aug. 25	12	MEMORANDUM by plaintiff(s) BOS- SIER PARISH on enjoining proceedings in the Middle District of Louisiana in Knight, et al. v. McKeithen, et al. (jeb) [Entry date 08/26/94]
Aug. 26	15	MEMORANDUM by movant GEORGE PRICE for intervention, Exhibit (1) (lpp) [Entry date 09/07/94]

DOCKET NUMBER DATE PROCEEDINGS Aug. 31 14 ORDER by Judge Charles R. Richev: discovery due 4:00 10/14/94; directing the plaintiff and defendant file briefs on injunction issue due 4:00 p.m. 8/24/94; prospective intervenors to file brief on injunction issue due 8/26/94; granting plaintiff leave to file its brief on injunction issue by facsimile; plaintiff to file briefs and dispositive motions due 4:00 10/26/94; defendant and prospective intervenors to file their briefs and dispositive motions due 4:00 11/9/94; directing parties to submit direct testimony in narrative form (N) (jeb) Sept. 8 MEMORANDUM OPINION by Judge 16 Charles R. Richey (N) (jeb) Sept. 8 ORDER by Judge Charles R. Richey: 17 granting motion for leave to intervene [9-1] by GEORGE PRICE; advising counsel that the Court shall not issue an injunction at this time, but the Court may revisit this issue at a future time, as may be appropriate. (N) (jeb) Sept. 8 ANSWER by Defendants-Intervenors TO 21 COMPLAINT [2-1]. (lpp) [Entry date

09/29/941

DATE	DOCI	
Sept. 13	18	ATTORNEY APPEARANCE for defendant JANET RENO by Gaye L. Hume (kmk) [Entry date 09/14/94]
Sept. 13	19	ANSWER TO COMPLAINT [2-1] by defendant JANET RENO. (kmk) [Entry date 09/14/94]
Sept. 26	20	MOTION filed by plaintiff(s) BOSSIER PARISH for relieve complainants of duty to answer certain interrogatories and requests for production of documents, Affidavit (1), Exhibit (1) (lpp) [Entry date 09/29/94]
Sept. 26	22	RESPONSE by intervenors in opposition to motion for relieve complainants of duty to answer certain interrogatories and requests for production of documents [20-1] by BOSSIER PARISH, Attachment: (1). (lpp) [Entry date 09/29/94]
Oct. 3	23	REQUEST by intervenor GEORGE PRICE for admissions for plaintiff(s) BOSSIER PARISH, Attachments (21) (lpp) [Entry date 10/05/94]

DATE	DOC	KET IBER PROCEEDINGS
Oct. 6	24	ORDER by Judge Charles R. Richey adenying motion for relieve complainants of duty to answer certain interrogatories and requests for production of documents [20-1] by BOSSIER PARISH; granting the defendant-intervenors' objections; denying and overruling the plaintiff's objections (N) (jeb)
Oct. 17	25	NOTICE OF FILING by defendant JANET RENO, of an agreed order extending discovery period and certain related filing deadlines, Exhibit (1) (lpp) [Entry date 10/18/94]
Oct. 25	26	STIPULATED ORDER by Judge Charles R. Richey: discovery due 10/28/94; plaintiffs' briefs and dispositive motions due 11/9/94; extending time to file proposed findings of fact and conclusions of law due 11/7/94; extending time to 11/23/94 for defendant and defendant-intervenors' briefs and dispositive motions to be filed.; (N) (jeb)

DOCKET DATE NUMBER PROCEEDINGS Nov. 9 27 ORDER by Judge Charles R. Richey: All prior ORders shall remain in full force; Counsel for parties shall Meet Confer hearing set for 4:00 11/18/94, Cousel [sic] for parties shall file statements of material facts due by 4:00 11/21/94, and cross motions for summary judgment due 4:00 11/21/94; response to motions for summary judgment due 4:00 11/30/94, reply motions for summary judgment due 4:00 12/5/94; (N) (lpp) [Entry date 11/14/94] Nov. 9 28 ORDER by Judge Charles R. Richey: Meet Confer hearing set for 4:00 11/18/94. statement of material facts which are not in dispute due 4:00 11/21/94;, cross motions for summary judgment due 4:00 11/21/94; response to motion for summary judgment due 4:00 11/30/94 reply motion for summary judgment due 4:00 12/5/94; (N) (lpp) [Entry date 11/14/94] Nov. 10 29 PRETRIAL STATEMENTS by plaintiff BOSSIER PARISH (lpp) [Entry date 11/14/94] Nov. 16 30 MOTION filed by plaintiff BOSSIER PARISH to extend time to comply with the Court Order 11/9/94, Attachment (3) (lpp) [Entry date 11/17/94]

DATE	DOCKET NUMBER PROCEEDINGS		
Nov. 17	31	RESPONSE by defendant JANET RENO to motion to extend time to comply with the Court Order 11/9/94 [30-1] by BOSSIER PARISH (ted) [Entry date 11/18/94]	
Nov. 17	32	REQUEST by defendant JANET RENO for clarification (ted) [Entry date 11/18/94]	
Nov. 17	33	MEET AND CONFER STATEMENT/ REPORT PURSUANT TO L.R. 206(d) filed by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE. (ted) [Entry date 11/18/94]	
Nov. 18	-	Tele-conference before Judge Charles R. Richey reporter: Frank Rangus (jeb)	
Nov. 21	34	ORDER by Judge Charles R. Richey: all prior Orders shall remain in full force and effect, except as modified herein (N) (dbw)	
Nov. 23	35	PRETRIAL STATEMENTS by intervenors GEORGE PRICE, attachments (2) (lpp) [Entry date 11/25/94]	

DATE	DOCKET NUMBER PROCEEDINGS		
Nov. 25	36	PRETRIAL STATEMENTS by defendant JANET RENO, attachments (3) (lpp) [Entry date 11/28/94]	
Nov. 30	37	JOINT MEMORANDUM by intervenor- defendants of findings of fact and con- clusions of law (lpp) [Entry date 12/01/94]	
Dec. 19	38	NOTICE OF FILING by defendant JANET RENO: Final Version of Direct Testimony (14), bulky pleading (lpp) [Entry date 12/21/94]	
Dec. 20	39	NOTICE OF FILING by intervenor GEORGE PRICE: Addendum to DIrecto [sic] Testimony of William Cooper and Jerry Hawkins (2) (lpp) [Entry date 12/22/94]	
Dec. 20	40	NOTICE OF FILING by defendant JANET RENO; of disputed portions of direct testimony.; attachments (blj) [Entry date 12/22/94]	
Dec. 20	41	NOTICE OF FILING by defendant JANET RENO of original final version of direct testimony of Gary Dillard Joiner; attachments (1) (blj) [Entry date 12/22/94]	

DATE	DOCE	
Dec. 21	42	NOTICE OF FILING by plaintiff BOSSIER PARISH: Rebuttal Testimony (2) (lpp) [Entry date 12/23/94]
Dec. 22	43	NOTICE OF FILING by defendant JANET RENO, intervenor GEORGE PRICE: Filing of Disputed portions of Rebuttal Testimony (2), Attachment (2) (lpp) [Entry date 12/23/94]
1995		
Jan. 3	44	NOTICE OF FILING by defendant JANET RENO/United States: Corrected Pleading - Notice By U.S. and Defendant-Intervenors of filing of disputed portions of rebuttal testimony, Exhibit (1), Attachment (2) (lpp) [Entry date 01/06/95] [Edit date 03/30/95]
Jan. 10	45	ORDER by Judge Charles R. Richey: directing counsel to advise Judge Richey, in writing, by 1/17/95 4:00 p.m. as to whether they consent to having undersigned Judge hear testimony and evidence, and transmit ensuing record to Circuit Judge Silberman and District Judge Kessler for review; upon review, the three Judges shall have oral argument to consider the record and briefs of Counsel; telephonic status hearing set for 2:00 1/18/95 (N) (dbw)

DATE	DOCE	
Jan. 18	-	STATUS HEARING (TELECON-FERENCE) before Judge Charles R. Richey: bench trial set for 10:00 4/10/95 Reporter: Susan Tyner (dbw)
Jan. 18	46	ORDER by Judge Charles R. Richey: directing Counsel to meet and confer by 2/20/95 4:00 p.m. and file stipulations of fact and law and evidentiary objections by 3/20/95 4:00 p.m.; exhibit list and witness list due 3/20/95 4:00 p.m.; trial set for 10:00 4/10/95 and continuing the next day thereafter; all prior Orders shall remain in full force and effect (N) (dbw) [Entry date 01/19/95]
Feb. 3	47	JOINT MOTION by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE to modify scheduling order; Attachment (ted) [Entry date 02/06/95]
Feb. 3	48	JOINT MOTION by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE to expedite ruling on defendants' motion to exclude testimony; Attachment (ted) [Entry date 02/06/95]

DATE	DOCI	
Feb. 3	49	MOTION filed by defendant JANET RENO to exclude testimony; Attachment (ted) [Entry date 02/06/95]
Feb. 14	50	RESPONSE (OPPOSITIONS) by plaintiff BOSSIER PARISH to Defendants and Intervenors' objections to testimony of complainant's witnesses, attachment (1) (lpp) [Entry date 02/15/95]
Feb. 17	51	NOTICE OF FILING by intervenor GEORGE PRICE: Direct Tesdtimony [sic] of David Creed, letter (1) fiat 02/22/95 (lpp) [Entry date 02/23/95]
Feb. 24	52	REPLY by defendant JANET RENO, intervenor GEORGE PRICE to response to response [50-1] by BOSSIER PARISH, Exhibits (4). (lpp) [Entry date 02/27/95]
March 17	53	EXHIBIT list by plaintiff Basier [sic] Parish School Board (lpp) [Entry date 03/20/95]
March 17	54	WITNESS LIST by plaintiff BOSSIER PARISH (lpp) [Entry date 03/20/95]

DATE	DOCKET NUMBER PROCEEDINGS		
March 17	63	DEPOSITION of Bob G. Burford taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (lpp) [Entry date 03/23/95]	
March 20	55	EXHIBIT list by defendant-intervenors (lpp) [Entry date 03/21/95]	
March 20	56	STIPULATION filed by Bossier Parish School Board, Plaintiff; Janet Reno, Defendant; George Price, Defendant-Intervenors et al. regarding Fact and Law. (N) (lpp) [Entry date 03/21/95] [Edit date 03/21/95]	
March 20	57	NOTICE OF FILING by defendant JANET RENO: Final Versoion [sic] of Direct Testimony (lpp) [Entry date 03/21/95]	
March 20	58	STIPULATION filed by Bossier Parish School Board, Plaintiff and Janet Reno, Defendant and George Price et al. Defendant-Intervenors, regarding: Ex- hibits. (N) (lpp) [Entry date 03/21/95]	
March 20	59	MOTION filed by defendant JANET RENO to exclude exhibit of plaintiff (lpp) [Entry date 03/21/95]	

DATE	DOCK NUM	
March 20	60	EXHIBIT list by Janet Reno, Defendant (lpp) [Entry date 03/21/95]
March 21	61	DEPOSITION of Paul Caplis taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/13/94. (lpp) [Entry date 03/23/95]
March 21	62	DEPOSITION of James M. Bullers taken by plaintiff BOSSIER PARISH, defen- dant JANET RENO, intervenor GEORGE PRICE on 3/21/95. (lpp) [Entry date 03/23/95]
March 21	64	DEPOSITION of William Johnston taken by plaintiff BOSSIER PARISH, defen- dant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (lpp) [Entry date 03/23/95]
March 21	65	JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor GEORGE PRICE to plaintiffs designation of deposition testimony of James Bullers [62-1] by GEORGE PRICE, JANET RENO, BOSSIER PARISH (dcn) [Entry date 03/23/95]

DATE	DOCKI NUMB	ET PROCEEDINGS
March 21	66	WITNESS LIST by defendant JANET RENO, intervenor GEORGE PRICE (dcn) [Entry date 03/23/95]
March 21	67	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of James Ramsey taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/13/94. (dcn) [Entry date 03/23/95]
March 21	68	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of JAMES ELKINS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (dcn) [Entry date 03/23/95]
March 22		JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor GEORGE PRICE to plaintiffs cross- designations of deposition testimony of school board members (dcn) [Entry date 03/23/95]
March 22		JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of MARGUERITE HUDSON taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 09/29/94. (dcn) [Entry date 03/23/95]

DATE	DOCK NUMI	
March 22	71	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TEST <sub>IMONY</sub> of JUANITA JACKSON taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/29/94. (dcn) [Ent <sub>ry</sub> date 03/23/95]
March 22	72	JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of David Harvey taken by defendant JANET RENO, intervenor GEORGE PRICE on 9/30/94. (dcn) [Entry date 03/23/95]
March 22	73	JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of BARBARA BAYLOCK [sic] taken by defendant JANET RENO, intervenor GEORGE PRICE on BARBARA BLAYLOCK [sic]. (dcn) [Entry date 03/23/95]
March 22	74	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TEST IMONY of RUTH SULLIVAN taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/29/95. (dcn) [Entry date 03/23/95]

DATE DOCKET PROCEEDINGS

- March 22 75

  JOINT DESIGNATION OF PORTIONS
  OF DEPOSITION TESTIMONY of
  BARBARA GRAY taken by plaintiff
  BOSSIER PARISH, defendant JANET
  RENO, intervenor GEORGE PRICE on
  BARBARA GRAY [sic]. (dcn) [Entry
  date 03/23/95]
- March 22 76

  JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of SUSAN BARERRA taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95. (dcn) [Entry date 03/23/95]
- March 22 77 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of BOYCE HENSLEY taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95 [sic]. (dcn) [Entry date 03/23/95]
- March 22 78

  JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of MICHELLE RODGERS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95 [sic]. (dcn) [Entry date 03/23/95]

DATE	DOCK NUME	
March 22	79	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of HENRY BURNS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/6/94. (dcn) [Entry date 03/23/95]
March 29	80	MOTION filed by defendant JANET RENO the United States seeks per- mission to subpoena witnesses, attach- ment (a) (lpp) [Entry date 03/31/95]
April 3	81	ORDER by Judge Charles R. Richey : granting motion of the United States seeking permission to subpoena witnesses [80-1] by JANET RENO (N) (dbw)
April 3	82	MOTION filed by plaintiff BOSSIER PARISH to add additional counsel, Affidavit (1) (lpp) [Entry date 04/04/95]
April 4	85	MOTION filed by intervenor GEORGE PRICE seeking permission to subpoens witnesses (lpp) [Entry date 04/07/95]
April 6	83	ENTERED IN ERROR (lpp)

DATE	DOC!	
April 6	-	Tele-conference before Judge Charles R. Richey: bench trial remains set for 4/10/95 10:00 a.m. Reporter: Susan Tyner (dbw) [Entry date 04/07/95]
April 6	84	ORDER by Judge Charles R. Richey authorizing Frank M. Ferrell to assist as additional attorney of record for complainant in prosecution of its cause in this court [82-1] (N) (dbw) [Entry date 04/07/95]
April 7	86	ORDER by Judge Charles R. Richey: granting motion seeking permission to subpoena witnesses [85-1] by GEORGE PRICE (N) (dbw)
April 7	88	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Ruth Sullivan, attachment. (jeb) [Entry date 04/11/95]
April 7	89	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Marquerite Hudson; attachment. (jeb) [Entry date 04/11/95]

DATE	DOC:	KET IBER PROCEEDINGS
April 7	90	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Michelle Rodgers; attachment. (jeb) [Entry date 04/11/95]
April 7	91	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Barbara Blaylock; attachment. (jeb) [Entry date 04/11/95]
April 7	92	EXHIBIT list of defendant United States. (jeb) [Entry date 04/11/95]
April 7	93	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of David Harvey; attachment. (jeb) [Entry date 04/11/95]
April 7	94	NOTICE OF FILING of supplemented direct testimony of S.P. Davis; attachment. (jeb) [Entry date 04/11/95]
April 7	95	NOTICE OF FILING of corrected direct testimony of Dr. George Castille; attachment. (jeb) [Entry date 04/11/95]
April 7	96	NOTICE OF FILING (jeb) [Entry date 04/11/95]

DATE April 7	DOCKET NUMBER PROCEEDINGS		
	97	AMENDED JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor-defendant GEORGE PRICE to plaintiff's cross-designations of deposition testimony of school board members. (jeb) [Entry date 04/11/95]	
April 7	98	FINAL STIPULATIONS of fact and law. (jeb) [Entry date 04/11/95] [Edit date 04/11/95]	
April 7	99	RESPONSE (OPPOSITIONS) by plaintiff BOSSIER PARISH to objection [97-1] by GEORGE PRICE, JANET RENO (lpp) [Entry date 04/12/95]	
April 7	100	RESPONSE by plaintiff BOSSIER PARISH to motion to excude [sic] exhibit of plaintiff [59-1] by JANET RENO (lpp) [Entry date 04/12/95]	
April 10	-	NON-JURY TRIAL before Judge Charles R. Richey begun and continued to 9:30 4/11/95. Reporter: Susan Tyner (dbw)	

DOCKET DATE NUMBER PROCEEDINGS April 10 ORDER by Judge Charles R. Richey : 87 directing counsel not to use word "expert", but instead shall refer to such persons as "opinion" witnesses during trial; Attachment (1) (N) (dbw) [Edit date 04/11/951 April 11 NON-JURY TRIAL before Judge Charles R. Richey resumed and concluded; case [0-0] taken under advisement; proposed findings of fact due 5/3/95 4:00 p.m. Reporter: Susan Tyner (dbw) [Edit date 04/11/95] April 12 ORDER by Judge Charles R. Richey: 101 proposed findings of fact due 4/28/95; marked-up proposed findings of fact due by 4:00 5/5/95; advising parties that when the Court issues its findings of fact, a briefing and oral argument schedule shall be issued. (N) (dbw) April 19 TRANSCRIPTS (2) filed for dates of 102 4/10/95; 4/11/95. Volumes I and II. Reporter: Susan Page Tyner (bm) [Entry date 04/21/95]

DATE	DOCI	KET BER PROCEEDINGS
May 5	103	NOTICE OF FILING by defendant JANET RENO, intervenor-defendant GEORGE PRICE of marked-up proposed findings of fact and conclusions of law of plaintiff; attachment. (jeb) [Entry date 05/08/95]
May 5	104	NOTICE OF FILING by plaintiff BOSSIER PARISH of marked-up proposed findings of fact and conclusions of law of defendant and defendant- intervenor; attachment. (jeb) [Entry date 05/08/95]
May 15	105	ORDER by Judge Charles R. Richey: deferring ruling on the facts until after the Opinions are handed down in related cases before the U.S. Supreme Court; directing that on the tenth business day following the Supreme Court's issuance of its opinion in the related cases, counsel for all parties shall file simultaneous briefs on the law as a supplement to the factual supplements already filed; oral argument as to the facts of [sic] the law set for 9:30 7/19/95; (N) (jeb)

DATE	DOCK NUME	
May 25	106	ORDER by Judge Charles R. Richey setting oral argument as to the facts and the law for 9:30 a.m. 7/27/95 and continuing thereafter until 12:00 p.m. of the same day with the understanding that counsel for all parties shall meet and confer prior to argument to divide up the time among themselves in such manner as they deem fit (N) (dbw)
July 11	107	ORDER by Judge Charles R. Richey: reminding counsel, pursuant to Court's Order of 5/15/95, they [sic] they are file [sic] file final briefs with respect to futher issues herein and the two Supreme Court Opinions entitled US v. Hays and Miller v. Johnson by 4:00 on 7/14/95; directing Clerk of Court to telephone contents of this Order to Counsel for all parties (N) (dbw)
July 12	108	SUPPLEMENTAL BRIEF by plaintiff BOSSIER PARISH; attachment (post- trial brief); exhibits (4) (No signature on pleading). (jmf) [Entry date 07/13/95] [Edit date 07/13/95]
July 14	109	POST TRIAL BRIEF by defendant JANET RENO (BULKY PLEADING) (jmf) [Entry date 07/18/95]

DATE	DOCK NUMI	ET PROCEEDINGS		
July 14	110 POST TRIAL BRIEF by intervention defendant GEORGE PRICE (jmf) [I date 07/18/95]			
July 24	111	NOTICE OF FILING by defendant JANET RENO of unreported decision and errata to post-trial brief; Attachments (2) (ted) [Entry date 07/25/95]		
July 27	-	ORAL ARGUMENT held before Circuit Judge Laurence Silberman, Judge Charles R. Richey, and Judge Gladys Kessler Reporter: Susan Tyner (dbw)		
Aug. 23	112	TRANSCRIPT filed for Oral Argument held on date(s) of July 27, 1995. Reporter: Susan Page Tyner (jmf)		
Nov. 2	113	MEMORANDUM OPINION FOR THE COURT by Judge Laurence H. Silberman and Judge Charles R. Richey granting plaintiff Bossier Parish School Board the requested declaratory judgment (N); APPENDIX (2) (dbw) [Entry date 11/03/95]		
Nov. 2	114	MEMORANDUM OPINION by Judge Gladys Kessler concurring in part and dissenting in part (N) (dbw) [Entry date 11/03/95]		

DATE	DOCH NUM	
Nov. 2	115	ORDER by Judge Laurence H. Silberman and Judge Charles R. Richey: plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect (N) (dbw) [Entry date 11/03/95]
Dec. 27	116	(ENTERED IN ERROR) NOTICE OF APPEAL by defendant JANET RENO from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], order [115-2], entered on: November 03, 1995. No fee paid U.S. Gov't; Copies mailed to James J. Thornton, Nancy Sardeson, Gaye L. Hume, Patricia A. Brannan and Samuel L. Walters. (jmf) [Entry date 12/28/95] [Edit date 01/30/96]
Dec. 27	119	NOTICE OF APPEAL by defendant JANET RENO to the U.S. Supreme Court from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], order [115-2], entered on: November 03, 1995. (jmf) [Entry date 01/30/96]

DATE	DOCK NUME	
Dec. 28	-	TRANSMITTED PRELIMINARY RECORD on appeal [116-1] by JANE RENO to U.S. Court of Appeals (jmf)
1996		
Jan. 2	117	NOTICE OF FILING by defendar JANET RENO of clarification on service of previously filed notice of appeal. (jm: [Entry date 01/03/96]
Jan. 2	118	NOTICE OF APPEAL by intervenor defendants' to the U.S. Supreme Cour from order plaintiff Bossier Parish School Board shall be, and hereby is, give preclearance for its election plan adopte on October 1, 1992, and shall have declaratory judgment to that effect [1181], entered on: \$5.00 filing fee paid November 03, 1995. (jmf) [Entry dat 01/03/96]
March 1	120	LETTER received from Supreme Council of the U.S. that the application for extension of time within which to docke an appeal has been granted to an including March 11, 1996 (jmf) [Entry dat 03/06/96]

DATE	DOC	KET MBER PROCEEDINGS
March 4	121	LETTER from the Supreme Court of the U.S. that the application for an extension within which to docket an appeal has been granted to and including March 18, 1996. (jmf) [Entry date 03/06/96]
Aug. 12	-	CERTIFIED and transmitted record on to U.S. Supreme Court (jmf)
1997		
June 12	122	CERTIFIED COPY of judgment filed in the Supreme Court dated 5/12/97, on appeal [118-1], appeal [119-1], remanding for further proceedings. OPINION Supreme Court #95-1455 & 95-1508 (cjp) [Entry date 06/19/97]
June 12	123	CERTIFIED COPY of judgment filed in the Supreme Court dated 5/12/97, on appeal [118-1], appeal [119-1], awarding costs SUPREME COURT # 95-1455 & 95- 1508 (cjp) [Entry date 06/19/97]
June 12	_	Case Reopened (ab) [Entry date 07/07/97]
June 19	-	CASE REASSIGNED to Judge James Robertson (jmf) [Entry date 06/24/97]

DATE	DOCI NUM	
July 10	-	Record returned from US Supreme Court (jmf) [Entry date 08/13/97]
Aug. 13	124	ORDER by Judge James Robertson: directing the parties to file motions or short memoranda setting forth their views of what further proceedings are required due by 9/5/97 (N) (jeb) [Entry date 08/14/97]
Sept. 4	127	NOTICE OF FILING by plaintiff BOSSIER PARISH brief on procedures in trial court after remand (jmf) [Entry date 09/10/97]
Sept. 5	125	RESPONSE by defendant JANET RENO to Court's order dated August 13, 1997 [124-2] (jmf) [Entry date 09/08/97]
Sept. 5	126	RESPONSE by intervenor-defendants' to Court's order dated August 13, 1997 [124- 2] (jmf) [Entry date 09/08/97]
Sept. 9	128	ORDER by Judge James Robertson: directing that the plaintiff may have to 10/24/97 to file a supplemental brief and defendant and defendant-intervenor to file responsive briefs due by 12/8/97 (N) (jeb) [Entry date 09/10/97]

DATE	DOC	KET IBER PROCEEDINGS
Sept. 19	ORDER by Judge James Robertson directing that any party wishing present additional evidence give notice memorandum due 9/30/97; response brief due 10/15/97; (N) (jeb)	
Sept. 29	130	MEMORANDUM by plaintiff BOSSIER PARISH in response to the order of the District Court (jmf)
Oct. 23	131	NOTICE OF FILING by plaintiff BOSSIER PARISH of brief in behalf of plaintiff (jmf) [Entry date 10/24/97]
Dec. 8	132	STATEMENT filed by intervenor- defendant, regarding: brief on remand. (jmf) [Entry date 12/09/97]
Dec. 8	133	STATEMENT filed by federal defendant JANET RENO, regarding: brief on remand. (jmf) [Entry date 12/09/97]
Dec. 23	134	MOTION filed by plaintiff BOSSIER PARISH for authority to file reply brief (jmf) [Entry date 12/29/97]

DATE	DOCI	
1998	M	
Jan. 6	135	ORDER by Judge James Robertson granting motion for authority to file reply brief [134-1] by BOSSIER PARISH (N (jeb) [Entry date 01/07/98]
Jan. 30	136	REPLY BRIEF by plaintiff BOSSIER PARISH (jmf) [Entry date 02/03/98]
March 20	137	ATTORNEY APPEARANCE for intervenor-defendants by Edward Still (jmf. [Entry date 03/24/98]
May 1	138	MEMORANDUM OPINION by Judge James Robertson (N) (jeb) [Entry date 05/04/98]
May 1	139	ORDER by Judge James Robertson: directing that the plaintiff Bossier Parish School [sic] is given pre-clearance for its election plan adopted on 10/1/92, and that it shall have a declaratory judgment to that effect. (N) (jeb) [Entry date 05/04/98]
July 6	140	NOTICE OF APPEAL by federal defendant JANET RENO to the U.S. Supreme Court from order [139-1], entered on: 05/04/98; fee not paid, appeal by govt. Copies mailed to counsel. (lkn) [Entry date 07/08/98] [Edit date 07/09/98]

DATE	DOCK NUMI	ET BER	PROCEEDINGS
July 6	141	defend from o fee not	CE OF APPEAL by intervenorant to the U.S. Supreme Court rder [139-1] entered on: 05/04/98; paid. Copies mailed to counsel. Entry date 07/08/98] [Edit date 8]
Sept. 26	_		oreme # 98-406 assigned for appeal by intervenor-defend (jmf)

## [Department of Justice letterhead omitted]

May 31, 1990

Ms. Cheryl G. Martin Secretary-Treasurer Bossier Parish Police Jury P. O. Box 68 Benton, Louisiana 71006

Dear Ms. Martin:

This refers to Ordinance No. 3101 (1989) which provides for a realignment of voting precincts for Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 2, 1990.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne Assistant Attorney General Civil Rights Division

By: /s/ Lora L. Tredway for Barry H. Weinberg Acting Chief, Voting Section

### [Department of Justice letterhead omitted]

July 29, 1991

Mr. James W. Ramsey Bossier Parish Police Jury P. O. Box 68 Benton, Louisiana 71006

Dear Mr. Ramsey:

This refers to the 1991 redistricting plan for the police jury, the precinct realignment, twelve polling place changes, and the creation of seventeen new voting precincts and the polling places therefor for Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on May 28, 1991; supplemental information was received on July 19, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne Assistant Attorney General Civil Rights Division

By: /s/ Sandra Coleman

for Gerald W. Jones Chief, Voting Section Extract of Minutes of Bossier Parish Police Jury meeting on January 11, 1994 (Plaintiff's Exhibit 5)

. . .

Mr. Avery stated that he has spoken to Mr. Gary Joiner regarding the current issue of the Bossier Parish School Board's struggle for approval of its reapportionment plan by the Justice Department. The school board has submitted the same plan which the Justice Department approved for the police jury two years ago, but has been denied approval. Motion was made by Mr. Meachum, seconded by Mr. Glorioso, that the Bossier Parish Police Jury clarify that it stands by its original reapportionment plan. Mr. Darby stated that he is concerned that if the school board and the police jury have different district lines, it will be confusing to Bossier Parish citizens. However, Mr. Darby indicated that he supports the police jury's original plan. Mr. Bullers, District Attorney, stated that he does not understand the position of the Justice Department and that he feels the school board will ultimately end up in court with a judge making the final decision. Votes were cast on Mr. Meachum's motion to make public the police jury's intention to maintain its current district lines. Motion carried unanimously.

## UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION NUMBER 94-848-A2

REVEREND JESSE CARROLL KNIGHT, SR., ET AL., PLAINTIFF

v.

W. FOX MCKEITHEN, ET AL., DEFENDANTS

HONORABLE JOHN V. PARKER AUGUST 23, 1994

#### COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### APPEARANCES

FOR THE PLAINTIFF:

MS. PATRICIA A. BRANNAN ATTORNEY AT LAW

MR. JOHN W. BORKOWSKI ATTORNEY AT LAW

MR. SAMUEL L. WALTERS ATTORNEY AT LAW

FOR THE EAST CARROLL PARISH SCHOOL BOARD:

MR. MICHAEL LANCASTER ATTORNEY AT LAW MR. JAMES D. CALDWELL ATTORNEY AT LAW FOR THE ST. MARY PARISH SCHOOL BOARD:

MR. JAMES MCCLELLAND ATTORNEY AT LAW

FOR THE BOSSIER PARISH SCHOOL BOARD:

MR. JAMES THORNTON ATTORNEY AT LAW

MR. FRANK M. FERRELL ATTORNEY AT LAW

FOR THE SECRETARY OF STATE:

MS. SHERI MORRIS ATTORNEY AT LAW

FOR RICHARD IEYOUB:

MS. ANGIE LAPLACE ATTORNEY AT LAW

FOR THE UNITED STATES:

MS. NANCY SARDESON ATTORNEY AT LAW

#### REPORTED BY: KAY RABORN, C.C.R OFFICIAL COURT REPORTER

[2] THE COURT: ALL RIGHT, THIS WILL BE THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, AT LEAST TO THE EXTENT THAT WE CAN PUT SOMETHING TOGETHER, SUBJECT, OF

COURSE, TO FURTHER ADDITIONAL FINDINGS AND CONCLUSIONS SHOULD THAT BECOME APPROPRIATE.

THIS MATTER IS BEFORE THE COURT ON A MOTION FOR PRELIMINARY INJUNCTION FILED ON BEHALF OF THE PLAINTIFFS, WHO ARE ALLEGED TO BE BLACK CITIZENS AND REGISTERED VOTERS OF EAST CARROLL AND BOSSIER PARISHES, INSOFAR AS IS CURRENTLY MATERIAL. AND THERE IS, OF COURSE, NO EVIDENCE TO THE CONTRARY.

THEY ALLEGE THAT THE SCHOOL BOARDS ARE THREATENING TO DEPRIVE THE PLAINTIFFS OF THEIR RIGHT TO PARTICIPATE EQUALLY IN PUBLIC SCHOOL BOARD ELECTIONS CONDUCTED UNDER LAWFUL NON-DISCRIMINATORY REDISTRICTING PLANS PURSUANT TO THE SCHEDULE PRESCRIBED BY STATE LAW FOR THE CONDUCT OF SUCH ELECTIONS IN VIOLATION OF THE 14TH AND 15TH AMENDMENTS, SECTIONS 2 AND 5 OF THE VOTING RIGHTS ACT OF 1965 AND 42 U.S.C. SECTION 1983.

IT IS UNDISPUTED THAT BOTH EAST CARROLL AND BOSSIER PARISHES HAVE NOT ADOPTED AND PLACED INTO EFFECT REDISTRICTING PLANS FOR THE SCHOOL BOARD. I SAID EAST CARROLL AND BOSSIER PARISHES. I MEAN, EAST CARROLL AND BOSSIER PARISHES SCHOOL BOARDS HAVE NOT ADOPTED AND SET INTO EFFECT REDISTRICTING PLANS FOR [3] THOSE RESPECTIVE BOARDS, AS THEY ARE REQUIRED TO DO, BOTH BY THE STATE LAW AND, OF COURSE, BY FEDERAL LAW.

ACCORDINGLY, THE THRUST OF THIS LITIGATION HAS TO BE TO TAKE APPROPRIATE STEPS SINCE IT IS UNDISPUTED THAT THERE IS A VIOLATION OF LAW TO TAKE APPROPRIATE STEPS TO REMEDY THE VIOLATION. I REPEAT, FOR PURPOSES OF CLARITY, THAT THE ONLY VIOLATION IS THE ONE-MAN-ONE-VOTE PRINCIPLE.

THERE ARE ALLEGED VIOLATIONS OF SECTION 2 OF THE VOTING RIGHTS ACT, BUT THAT IS NOT RELEVANT TO ANY ISSUE PRESENTLY BEFORE THE COURT. THE ONLY RELEVANCE TO SECTION 2 IS THAT IN ORDERING A REAPPORTIONMENT REDISTRICTING, THE COURT, THE BOARD, OR ANYBODY ELSE ATTEMPTING TO DRAW A PLAN, MUST COMPLY WITH ALL MEASURES OF LAW, INCLUDING SECTION 2 OF THE VOTING RIGHTS ACT.

IN ADDITION, IF THIS COURT STARTS DRAWING ANY PLANS, THE COURT SHOULD COMPLY OR THE PLAN ADOPTED BY THE COURT, ORDERED BY THE COURT, SHOULD COMPLY, IN EVERY POSSIBLE RESPECT, WITH ALL PORTIONS OF STATE LAW, WHICH ARE NOT CONTRADICTORY TO FEDERAL LAW. IT IS, I THINK, PRETTY CLEARLY ESTABLISHED THAT DISTRICT COURTS DO HAVE POWER TO FASHION INTERIM REMEDIES AND TO ORDER INTERIM PLANS INTO EFFECT WHERE NECESSARY, WHETHER [4] THERE IS ANY VIOLATION OF FEDERAL LAW, INCLUDING A VIOLATION OF THE ONE-MAN-ONE-VOTE PRINCIPLE.

ELECTIONS, OF COURSE, ARE PRESENTLY SCHEDULED ACCORDING TO THE STATE'S REGULAR TIMETABLE, THROUGHOUT THE STATE FOR SCHOOL BOARDS, AND WE HAVE STIPULATED

THAT IF THIS COURT ORDERS INTERIM PLANS INTO EFFECT, THAT QUALIFICATION TO RUN FOR OFFICE UNDER THAT PLAN WOULD BE TO-MORROW, AUGUST 24TH, AND THE NEXT DAY, AUGUST 25TH, AS I RECALL.

WAS IT TWO, OR THREE DAYS, MS. MORRIS?
MS. MORRIS: THREE.

THE COURT: CONSEQUENTLY, THERE IS A GREAT NEED FOR HASTE.

NOW, IN COMPLIANCE WITH SECTION 2 OF THE VOTING RIGHTS ACT, THAT PROVISION READS, IN PART, A VIOLATION OF SUBSECTION A IS ESTAB-LISHED, IF BASED ON THE TOTALITY OF CIRCUMSTANCES, AS [SIC] IS SHOWN, THAT THE POLITICAL PROCESSES LEADING TO NOMINATION OR ELECTION IN THE STATE OR POLITICAL SUBDIVISION ARE NOT EQUALLY OPEN TO PARTICIPATION BY MEMBERS OF A CLASS OF CITIZENS PROTECTED BY SUBSECTION A OF THIS SECTION, IN THAT ITS MEMBERS HAVE LESS OPPORTUNITY THAN OTHER MEMBERS OF THE ELECTORATE TO PARTICIPATE IN THE POLITICAL PROCESS AND TO ELECT REPRESENTATIVES OF THEIR CHOICE. SO, THAT IS THE GOAL THAT WE MUST HAVE IN MIND WHEN WE SEEK TO [5] REAPPORTION THE SCHOOL BOARD.

THE PLAINTIFFS HAVE PRESENTED A PLAN, WHICH THEY SAY WILL FULLY COMPLY, NOT ONLY WITH ONE-MAN-ONE-VOTE, BUT WILL FULLY MEET EVERY EXPECTATION AND REQUIREMENT OF SECTION 2 OF THE VOTING RIGHTS ACT. AND I AGAIN EMPHASIZE THAT WE

DO NOT HERE HAVE ANY PROVEN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT. WE HAVE A CLAIM BY THE PLAINTIFFS THAT DISTRICT 3 OF THE PLAN PRESENTED BY THE DEFENDANTS DOES NOT, IN MY WORDS, PRESENT AN EQUAL PLAYING FIELD SO THAT MEMBERS OF THE MINORITY DO HAVE AN OPPORTUNITY, WITH OTHER MEMBERS OF THE ELECTORATE, TO PARTICIPATE IN THE POLITICAL PROCESS AND TO ELECT REPRESENTATIVES OF THEIR CHOICE.

COUNSEL FOR THE PLAINTIFFS STARTED HER ORAL ARGUMENT A FEW MOMENTS AGO BY EMPHASIZING HOW CLOSELY THESE PLANS RESEMBLE EACH OTHER. AND THAT SEEMS, TO THE COURT, TO CERTAINLY BE CORRECT. IF MY ARITHMETIC IS STRAIGHT, THAT IS CORRECT. THE PLAINTIFFS WOULD ADD FIFTY-SIX BLACK PEOPLE OF VOTING AGE TO THAT DISTRICT AND WOULD ZONE OUT NINETY-TWO WHITE PEOPLE OF VOTING AGE IN THAT DISTRICT, WHICH WOULD CAUSE THE BLACK VOTING AGE POPULATION TO GO UP FROM 436 TO 492 AND THE WHITE VOTING AGE POPULATION TO GO DOWN FROM 239 TO 147, AND WOULD MAKE A TREMENDOUS DIFFERENCE IN THE PERCENTAGE.

[6] THE DISTRICT, AT PRESENT, AS DRAWN BY THE DEFENDANTS AND PRESENTED TO THE DEPARTMENT OF JUSTICE, HAS A VOTING AGE BLACK POPULATION OF 64.6 PERCENT, AND UNDER THE PLAINTIFFS' SUGGESTION, THESE SMALL NUMBERS WOULD PRODUCE AN INCREASE IN BLACK VOTING AGE POPULATION OF SEVENTY-SEVEN PERCENT, SOME THIRTEEN

PERCENT INCREASE, WHICH ILLUSTRATES THAT WHEN YOU'RE DEALING WITH SMALL NUMBERS, LARGE PERCENTAGES CAN RESULT.

THERE IS VERY LITTLE DIFFERENCE BETWEEN THESE PLANS. THE TESTIMONY OF DR. WEBER HAS CONVINCED ME THAT THE DISTRICT, AS DRAWN, PRESENTS A LEVEL PLAYING FIELD FOR VOTERS OF BOTH RACES.

SECTION 2 SPECIFICALLY PROVIDES NOTHING IN THIS SECTION ESTABLISHING A RIGHT TO HAVE MEMBERS OF A PROTECTED CLASS ELECTED IN NUMBERS EQUAL TO THEIR PROPORTION IN THE POPULATION.

I THINK THE PLAN DRAWN BY THE PLAINTIFFS IS WHAT THEY CALL, IN THIS TYPE OF LITIGATION, PACKING. THE EVIDENCE DOES NOT CONVINCE THE COURT THAT THERE IS ANY NECESSITY FOR PACKING IN THIS DISTRICT. THE ANALYSIS OF DR. WEBER OF THESE POLICE JURY ELECTIONS IN THIS SAME DISTRICT—WELL, THERE ARE TWO OF THEM; ONE IN THE OTHER DISTRICT, 3, AND ONE IN DISTRICT 5, WHERE BLACK POLICE JURY CANDIDATES WERE NOT ABLE TO WIN, [7] ILLUSTRATES TO ME THAT HAD THE BLACK POPULATION WANTED TO VOTE FOR THE BLACK CANDIDATE WHO LOST, THE BLACK CANDIDATE WOON.

IN OTHER WORDS, THE OPPORTUNITY, IN THE WORDS OF SECTION 2, THE OPPORTUNITY IS THERE. BY REASON OF THE SIXTY-FIVE PERCENT BLACK VOTING AGE POPULATION, THIS COURT HAS NO REASON TO BELIEVE THAT THIS DISTRICT IS NOT EQUALLY OPEN TO PARTICIPA-

TION BY MEMBERS OF A CLASS OF CITIZENS PROTECTED BY SUBSECTION A.

IN OTHER WORDS, IT DOESN'T SEEM TO ME THAT THIS GEOGRAPHIC DRAWING IS LIKELY TO PRODUCE A VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT, DESPITE WHAT THE DEPARTMENT OF JUSTICE MAY HAVE SAID. THE DEPARTMENT OF JUSTICE HAS TO DO ITS THING AND THE COURT WILL HAVE TO DO ITS THING, BASED UPON THE EVIDENCE PRESENTED IN COURT.

SINCE I'M NOT CONVINCED THAT THERE IS A NEED FOR PACKING, AS THE PLAINTIFFS PROPOSE, I'M NOT WILLING TO ORDER THE PLAN PRESENTED BY THE PLAINTIFFS INTO EFFECT AS AN INTERIM PLAN FOR USE IN THIS SCHOOL BOARD ELECTION.

IT IS HIGHLY DESIRABLE, HOWEVER, THAT THERE BE ELECTIONS—AN ELECTION FOR SCHOOL BOARD IN EAST CARROLL PARISH. TO ALLOW THE ENTIRE PARISH TO BE DEPRIVED OF THE RIGHT TO VOTE FOR MEMBERS OF THE SCHOOL [8] BOARD, BECAUSE OF THIS SMALL DISAGREEMENT—WELL, IT'S NOT A SMALL DISAGREEMENT. IT'S A VERY SERIOUS DISAGREEMENT BETWEEN THE PLAINTIFFS AND THE SCHOOL BOARD. BUT A DISAGREEMENT OVER THIS SMALL NUMBER OF PEOPLE, TO DEPRIVE ALL 9,709 PEOPLE OF THE PARISH THE OPPORTUNITY TO VOTE SEEMS, TO ME, TO BE RIDICULOUS.

UNDER THE CIRCUMSTANCES, THE COURT EXERCISES ITS DISCRETION IN ORDERING PLAN

NUMBER 6, OR WHATEVER YOU CALL IT, WHICH HAS BEEN OBJECTED TO BY THE ATTORNEY GENERAL, IN EFFECT FOR THE COMING ELECTION FOR SCHOOL BOARD IN EAST CARROLL PARISH, WITH THE PROVISO THAT THIS WILL TRULY BE AN INTERIM REMEDY.

THIS PLAN AND THE TERMS OF OFFICE OF THOSE ELECTED, SHALL BE LIMITED UNTIL THE NEXT ROUND OF ELECTIONS IN THE SPRING OF 1995. AS I RECALL, A REPRESENTATIVE OF THE SECRETARY OF STATE'S OFFICE SAYS THAT'S THE NEXT TIME YOU CAN HAVE AN ELECTION IN LOUISIANA.

IS THAT CORRECT, MS. MORRIS?

MS. MORRIS: THAT'S CORRECT.

THE COURT: WHENEVER THOSE DATES ARE.

MS. MORRIS: APRIL 1ST AND 29TH.

THE COURT: I CAN'T HEAR YOU.

MS. MORRIS: THEY'RE APRIL 1ST AND APRIL 29TH.

[9] THE COURT: THAT'S THE DATES OF THE ELECTION?

MS. MORRIS: YES.

THE COURT: OKAY. WELL, THAT IS AUGUST 23RD. BY THAT TIME, EAST CARROLL PARISH

SHOULD HAVE IN EFFECT A PERMANENT PLAN WHICH, OF COURSE, MUST BE APPROVED BY THE DEPARTMENT OF JUSTICE UNDER SECTION 5 OF THE VOTING RIGHTS ACT.

APPROVED. THEY JUST HAVE NO OBJECTION. IT'S NOT TECHNICALLY UNAPPROVED. PERHAPS YOU CAN WORK WITH THESE PLAINTIFFS AND COME UP WITH SOMETHING THAT THE DEPARTMENT OF JUSTICE CAN APPROVE, ALL THE WHILE BEARING IN MIND THAT YOU DON'T WANT TO SPLIT PRECINCTS OR OTHERWISE FAIL TO COMPLY FULLY WITH LOUISIANA LAW UNLESS IT'S ABSOLUTELY NECESSARY TO DO SO.

WHATEVER THE PLAN IS MUST BE RESUBMITTED TO THE COURT WELL IN ADVANCE. OR, IF YOU WANT TO AGAIN SUBMIT COMPETING PLANS, THAT WILL BE ALL RIGHT, TOO, BECAUSE THIS IS ONLY ON A MOTION FOR PRELIMINARY INJUNCTION AND THE MERITS OF THE CASE HAVE YET TO BE REACHED. I THINK PERHAPS YOU WERE WISE, COUNSEL, IN SUGGESTING THAT WE NOT ADVANCE TRIAL OF THE MERITS, AS THE COURT SUGGESTED THE OTHER DAY. IF NECESSARY, THE COURT WILL FIX A TIME BY WHICH YOU NEED TO RESUBMIT THAT PLAN, BUT RIGHT NOW, [10] I'M NOT GOING TO DO IT. I THINK WE'RE TOO UNCERTAIN AS TO WHAT THE TIME MIGHT BE.

AS FAR AS I KNOW, THAT TAKES CARE OF THE BUSINESS WITH EAST CARROLL.

THERE REMAINS ON THE TABLE THE SCHOOL BOARD OF BOSSIER PARISH. BOSSIER HAS SUBMITTED A PLAN TO THE DEPARTMENT OF JUSTICE, TO WHICH OBJECTION HAS BEEN TAKEN AND BOSSIER HAS FILED SUIT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

LET ME BACK UP ONE MINUTE. I DON'T FIND THAT THE EAST CARROLL PARISH SCHOOL BOARD HAS BEEN DELIBERATELY DRAGGING ITS COLLECTIVE FEET IN AN ATTEMPT TO BE DILATORY OR NOT REAPPORTION. AND THERE IS NO EVIDENCE BEFORE THE COURT THAT ANY OF WHAT WENT INTO THEIR PLAN IS DELIBERATELY INTENTIONALLY RACIALLY MOTIVATED OR INTENDED TO DILUTE BLACK VOTING STRENGTH OR OTHERWISE TO ATTEMPT TO PENALIZE OR DISENFRANCHISE MEMBERS OF THE MINORITY.

I THINK THE EAST CARROLL SCHOOL BOARD, AS HAS BEEN POINTED OUT. IS ONE OF THE POOREST PLACES IN THE-THE PARISH IS ONE OF THE POOREST PLACES IN THE UNITED STATES, AND I THINK THE BOARD HAS ATTEMPTED TO GET A REDISTRICTING PLAN IN AS ECONOMICAL A FASHION AS POSSIBLE. AND THAT'S ONE OF THE REASONS THEY WANTED TO DO IT THE SAME WAY THE POLICE JURY DID. BECAUSE THEY [11] DIDN'T HAVE TO HIRE SOME HIGH-PRICED EXPERT TO DRAW THEM A PLAN, IF THEY JUST ADOPTED THE POLICE JURY PLAN. AND WHEN THE DEPART-MENT OF JUSTICE OFFERED NO OBJECTION TO THE POLICE JURY PLAN, THAT CERTAINLY EN-COURAGED THEM TO THINK THAT IF IT'S SAUCE FOR THE GOOSE, IT OUGHT TO BE SAUCE FOR THE GANDER. OF COURSE, AS IT TURNS OUT, THEY WERE WRONG.

NOW, BACK TO BOSSIER. BOSSIER HAS SUBMITTED THE PLAN TO WHICH THE DEPARTMENT
OF JUSTICE HAS MADE AN OBJECTION, AND A
SUIT HAS BEEN FILED IN THE DISTRICT OF
COLUMBIA. THE BOSSIER SCHOOL BOARD HAD
MOVED FOR A STAY OF THESE PROCEEDINGS
PENDING THE OUTCOME OF THAT PROCEEDING. I
DON'T KNOW WHETHER I FORMALLY RULED ON
THAT, BUT IF I HAVEN'T, THAT MOTION FOR
THE STAY IS DENIED. OBVIOUSLY, WE HAVE PROCEEDED AND DID PROCEED.

THE SITUATION IN BOSSIER IS SIMILAR TO THE SITUATION IN EAST CARROLL IN THAT THE PLAN SUBMITTED BY THE BOSSIER SCHOOL BOARD TO THE DEPARTMENT OF JUSTICE IS IDENTICAL TO THAT WHICH WAS SUBMITTED BY THE BOSSIER POLICE JURY TO THE DEPARTMENT OF JUSTICE, TO WHICH NO OBJECTION WAS MADE BY THE DEPARTMENT.

THERE IS PERHAPS EVIDENCE OF SOME DELAY ON THE PART OF BOSSIER PARISH SINCE THE DEPARTMENT OF JUSTICE APPROVED THE BOSSIER POLICE JURY PLAN LONG AGO. I'VE FORGOTTEN JUST HOW LONG AGO. AND THERE WAS SOME [12] TIME LAG BETWEEN THAT APPROVAL AND SUBMISSION OF THE SCHOOL BOARD PLAN. BUT I DON'T FIND THERE IS ANY REAL EVIDENCE ON THE PART OF BOSSIER DELIBERATELY PERPETUATING THEMSELVES IN OFFICE, ALTHOUGH, THAT IS, OF COURSE, THE EFFECT OF NOT HAVING APPROVAL FROM THE DEPARTMENT OF JUSTICE, BECAUSE OF STATE LAW, WHICH PROVIDES THAT THEY SHALL

REMAIN IN OFFICE UNTIL THEIR SUCCESSORS ARE QUALIFIED.

THE PLAINTIFFS HAVE PROPOSED AN INTERIM PLAN FOR BOSSIER, AND, FRANKLY, THAT PLAN OFFENDS THE COURT BECAUSE IT MOST NEARLY RESEMBLES AN OCTOPUS AS IT STRETCHES OUT TO THE NOOKS AND CRANNIES OF THE PARISH IN ORDER TO COLLECT ENOUGH BLACK VOTING AGE POPULATION TO CREATE NOT ONE, BUT TWO, MAJORITY BLACK DISTRICTS IN BOSSIER. THE PERCENTAGE OF BLACK VOTING AGE POPULATION IN BOSSIER PARISH, ACCORDING TO THE INFORMATION SUBMITTED TO ME IS 17.7 PERCENT AND 20.2 PERCENT OF THE TOTAL PARISH POPULATION.

I'M NOT COMFORTABLE WITH THE PLAN PRE-SENTED BY THE PLAINTIFFS. I HAVE NOT HAD SUFFICIENT TIME OR SUFFICIENT EVIDENCE PRESENTED TO CONVINCE ME THAT SOME OTHER PLAN, WHICH COMPLIES WITH SECTION 2 OF THE VOTING RIGHTS ACT, CANNOT BE DRAWN THAT WILL RECOGNIZE COMPACTNESS AND WILL NOT ZIG-ZAG ALL OVER THE PARISH.

THIS COURT IS STILL OF THE OPINION THAT OTHER [13] PRINCIPLES OF DRAWING ELECTION DISTRICTS STILL APPLY, SUCH AS NATURAL BOUNDARIES AND HISTORICAL BOUNDARIES, RECOGNITION OF CITY LIMITS, RECOGNITION OF COMMON INTEREST OF A POPULATION, AND COMPACTNESS. THE PLANTIFFS' PLAN DOESN'T DO THAT.

I DON'T HAVE ANY EVIDENCE ABOUT THE PLAN SUBMITTED BY THE BOSSIER SCHOOL BOARD.

OTHER THAN THEIR LAWYER, MR. THORNTON, SAYS IT'S FINE. UNDER THOSE CIRCUMSTANCES, I CANNOT ORDER THE PLAINTIFFS' PLAN INTO EFFECT AS AN INTERIM PLAN, AND I DON'T HAVE SUFFICIENT INFORMATION ABOUT THE DEFENDANT'S PLAN TO FEEL COMFORTABLE ORDERING IT INTO EFFECT. UNDER THOSE CIRCUMSTANCES, I WILL DECLINE TO ORDER ANY PLAN INTO EFFECT AT THIS TIME.

IF THAT SEEMS RATHER ODD, IF IT'S IMPORTANT TO HAVE AN ELECTION IN EAST
CARROLL, WHY ISN'T IT IMPORTANT TO HAVE AN
ELECTION IN BOSSIER? WELL, IT IS. BUT DUE TO
THE HASTE OF THESE PROCEEDINGS, THE
ELECTION BEING SCHEDULED SO QUICKLY, THE
COURT SIMPLY IS NOT SATISFIED WITH ANY PLAN
WHICH HAS BEEN PRESENTED TO IT, NOR DO I
HAVE SUFFICIENT INFORMATION TO FEEL COMFORTABLE IN ATTEMPTING TO DEVISE A PLAN OF
MY OWN.

HOWEVER, BETWEEN NOW AND THE TIME WE TAKE THE MATTER UP ON THE MERITS, I WOULD EXPECT THAT ADDITIONAL PLANS BE PROPOSED. I DON'T THINK YOU CAN GET TWO [14] MAJORITY BLACK DISTRICTS IN THE PARISH OF BOSSIER WITHOUT GERRYMANDERING THE DISTRICTS. SO, I WOULD EXPECT BETWEEN NOW AND THE TRIAL OF THIS CASE ON THE MERITS BOTH SIDES MAY WELL WANT TO SUBMIT ADDITIONAL PLANS. AND BEFORE THE SCHEDULED TIME FOR ELECTIONS, IN THE SPRING OF NEXT YEAR, WE'LL HAVE A PLAN FROM THE COURT, OR BOSSIER SCHOOL BOARD WILL HAVE A NO OBJECTION BLESSING

FROM THE DISTRICT COURT IN THE DISTRICT OF COLUMBIA.

LET ME REPHRASE THAT SO THAT EVERYBODY UNDERSTANDS WHAT I'M SAYING. WE'RE GOING TO HAVE A PLAN FOR ELECTIONS NEXT SPRING, WHETHER THIS COURT DOES IT OR THE COURT IN THE DISTRICT OF COLUMBIA DOES IT. SO, AT THIS TIME THE COURT DECLINES TO ISSUE ANY INJUNCTION RELATIVE TO THE PARISH OF BOSSIER.

IF I NEED TO, I'LL MAKE SUPPLEMENTAL FIND-INGS AND CONCLUSIONS.

I CAN'T THINK OF ANYTHING I HAVEN'T COVERED. IF I'VE OMITTED SOMETHING, SOME-BODY SOUND OFF. WE ONLY HAVE THESE TWO LEFT, DON'T WE?

ALL RIGHT, COURT WILL BE IN RECESS.

(COURT RECESSED AT 3:30 P.M.)

Excerpts from Appellee's Exhibit 15 (Direct Testimony of School Board Member Barry C. Musgrove)

[2]

\* \* \* \* \*

Under the Police Jury plan which we adopted as our redistricting plan, my district would lose a large slice of territory in the south, the sparsely populated area I referred to earlier, and would gain [3] constituents a little to the north in the area of Parkway High School and in the Shady Grove area. If the Bossier Plan is adopted, I would be in the same district as Ms. Juanita Jackson. Another district would also have two incumbents living within its boundaries and two districts would have no incumbents. Personally, I do not intend to run again because to be a good and conscientious board member requires more time than I have. The bank I work for is expanding and my responsibilities require more travel which is very likely to interfere with my school board activities. I would not want to serve on the School board unless I had the time to attend to my duties conscientiously.

[5]

\* \* \* \* \*

Either before the Police Jury plan was completed or during the process, we talked with Mr. Gary Joiner, the demographer who was assisting the Police Jury, about drawing our plan. Our Superintendent recommended that we hire him. I had met him earlier when I was campaigning for a candidate for the BESSIE Board (a Louisiana board regulating elementary and secondary education throughout the state) and attended a school board meeting in Claiborne parish (a short distance

from Bossier Parish and situated in North Louisiana). At the time Mr. Joiner was talking to the Claiborne Parish School Board, and this was the first time I was introduced to Mr. Joiner. I had no further contact with him until he came before our Board. I did at that time, however, know who he was. I do not remember whether the appeared before our board before he was hired by us. He might have. I believe in about August, 1992 that Mr. Joiner made a presentation to our board. I believe this presentation took place after a regular board meeting but it could very well have been scheduled at some other time. We huddled around the screen and as I recall, he showed us some options and answered questions from board members about their proposed districts. The only complete plan I specifically recall was the Police Jury plan. He seemed to be saying "I looked at this but it did not work out" when he discussed other options. He have us some background and [6] I recall him saying that he could not contrive a black majority district with the population demographics of the parish. He emphasized that the only way a black district could be drawn was to cut and split precinct lines which violated state law. He was also asking for our input, and he told us he was still working on options. Personally, I was looking for his recommendation because I considered him the expert, and I certainly knew nothing about demography. Basically, I was asking Mr. Joiner to come up with a fair and legal plan and, in fact, relying on him to do so.

At some point in the fall of 1992, Mr. George Price presented a plan that had been drawn by the NAACP. It was about the time we voted to adopt the Police Jury plan. Mr. Price at the Board meeting expressed concern that he and other blacks had had no input into

the redistricting process and that he would appreciate our looking at the NAACP plan that contained two black districts. Mr. David Harvey was then president of the School Board and he asked Mr. Joiner who was present if he had seen the plan. Mr. Joiner answered in the affirmative. When asked further about the plan, he said it violated Louisiana law because it cut or split precinct lines. I do not recall exactly how many precinct cuts he mentioned by the number fifty-six sticks in my memory. I recall Mr. Price saying that federal law supersedes state law and I also recall Mr. James Bullers, the Bossier Parish District Attorney and legal counsel to the Board, saying that we [7] were obligated to follow Louisiana law. In short, we could not split and cut precincts. That exchange certainly ruled out the NAACP plan for me and I would think for the rest of the board as well. I also recall that the NAACP map showed districts of very odd configurations.

As this point I was generally satisfied with the Police Jury plan because it seemed a fair plan, it was in harmony with the laws of Louisiana, and it had already been precleared by the Justice Department. It seemed inconceivable to any of us that the Justice Department would preclear the plan for the Police Jury and object to the identical plan for the School Board. My willingness to adopt the Police Jury plan was not to any degree whatever based on race; it was based on convenience and the fact that it had already been found acceptable. That would have been my position if it had contained three black majority districts. I, and I think most of the members of the School Board simply wanted an end to this matter in order to get on to other things.

I do not recall the Board ever directly telling Mr. Joiner to draw black majority districts. There was no necessity because he had already told us that if the options permitted, we should look at drawing one or more black majority districts. I left it to him to look at the options and if an option contained one or more black districts, I expected him to make us aware of it. I believe he was addressing this matter when he explained that he could not legally draw a black majority district that did not [8] violate Louisiana law. Mr. Joiner made it quite clear from the beginning that if he could draw a black majority district we would certainly be required to look at the option. After he had drafted the Police Jury plan, I suppose that he was prepared to tell us that he legally could not fashion a black majority district.

\* \* \* \*

Excerpts from Appellee's Exhibit 17 (Direct Testimony of School Board Cartographer Gary Dillard Joiner)

[5]

\* \* \* \* \*

I would like to explain the enormity of the problem faced by the members of the Bossier Parish School Board in attempting to create black majority districts in Bossier Parish. As I have previously mentioned, it was illegal for the members of the school board to cut or split existing precincts. The only possible way to create black majority districts is on a census block level as opposed to a precinct level. But since that can't be done, you have to look at making precinct [6] cuts. When I attempted to create a black majority district within Bossier City the lowest number of cuts that I made was approximately fourteen (14). These precinct violations would have created fourteen new precincts inside Bossier City, primarily along the river. When I attempted then to add another black majority district to the north, the lowest combination of the two districts that I could come up with was something in the neighborhood of fifty-eight or sixty cuts. When I studied the original plan submitted by the NAACP which created two black majority districts, their plan had one hundred and sixty-two cuts. Each cut, and the creation of a new precinct requires a separate voting machine and a separate set of voting commissioners. This creates a serious additional cost factor for the voters of Bossier Parish, not to mention the confusion of the voter. To make matters worse for the members of the Bossier Parish School Board was the fact that Mr. James Bullers, the District Attorney of Bossier Parish and their legal counsel, advised them that they could not adopt a plan that cut or created new precincts.

\* \* \* \*

#### U.S. Exhibit 23

# Bossier Parish School Board Memoandum identifying minutes relating to redistricting

[Bossier Parish School Board letterhead omitted]

#### MEMORANDUM

Subject: MINUTES of the Bossier Parish School Board

Reference: Redistricting

Meeting Date	Page(s)	Reference
May 12, 1990	Page 54	Information on HB #1444 Delay of election 1990
October 18, 1990	Page 121	Motion to cooperate with BPPJ on redistricting
May 2, 1991	Page 212-213	Employment of demographer
September 5, 1991	Page 280	Maps outlining BPPJ districts
October 3, 1991	Page 294	Discussion/report
October 17, 1991	Page 300	Additional maps provided
August 20, 1992	Page 39	George Price addresses Board Re: Appointment of black to fill vacancy
September 3, 1992	Page 50	George Price presents NAACP district proposal

September 10, 1992	Pages 59-60	Appointment of black (Blunt) to fill vacancy in District K
September 17, 1992	Pages 61- 62	George Price presents NAACP plan for election districts
		Others address Board on redistricting
		Demographer presents recommendation
		Motion of intent to adopt and notice for public review
October 1, 1992	Pages 65-67	Resolution adopting re- apportionment of 12 elec- tion districts
December 17, 1992	Page 99	Status of filing redis- tricting plan
March 18, 1993	Page 131	Dept. of Justice requests reformatting of material presented
April 1, 1993	Page 143	Report on resubmission of plan and demographer visit to Washington, D.C.
June 3, 1993	Page 170	Report on correspon- dence from Dept. of Jus- tice

September 2, 1993	Page 212	Board instructs legal counsel to request Dept. of Justice to reconsider plan
September 16, 1993	Page 217	George Price objects to Board asking reconsid- eration of plan
November 4, 1993	Pages 241-242	Employment of special counsel
November 18, 1993	Pages 244-245	Price reports letter sent to Attorney General re- questing fees for counsel be denied
January 20, 1994	Page 69	Demographer asked to review plan for any pos- sibilities of redrawing lines without gerryman- dering
March 17, 1994	Page 297	Counsel to proceed in matters with Dept. of Justice
April 7, 1994	Pages 306-307	Ratification of employ- ment of special counsel
May 5, 1994	Page 319	Discussion to ask At- torney General for opin- ion on when to employ special counsel

July 7, 1994	Page 345	Report on contact with special counsel	
July 21, 1994	Page 351 Board receives tion from special of		
August 4, 1994	Page 354	Executive Session to discuss litigation	
September 1, 1994	Page 368	Executive Session to discuss litigation	
September 15, 1994	Page 376	Price requests cost of litigation	

Excerpts from U.S. Exhibit 26 (Bossier Parish School Board Minutes, May 2, 1991)

[212]

The President said Dr. Peterson had asked that Item No. 13 on the agenda, a discussion of redistricting, be taken up next. Dr. Peterson introduced Gary Joiner, a demographer, who had drawn up a redistricting plan for the Bossier Parish Police Jury. Dr. Peterson said he would like for the board to meet with Mr. Joiner at another time to discuss what he has proposed to suit the needs of the police [213] jury, as a result of the 1990 Census. Dr. Peterson said that following Mr. Joiner's presentation he would recommend that the Board engage his services to begin the redistricting process for the School Board.

Mr. Joiner said Bossier Parish gained about four percent in population over the last ten years. Eastwood and Haughton have mushroomed and it is almost possible to create a district out of Dogwood and Country Place. He said it was not done, however. Over the next 10 years he said the Haughton area would likely gain another district and Bossier City would likely lose one. The northern portion of the parish, north of Benton, would likely be one district and could very well be a black district. Another borderline district is the southern portion of the parish, south of Sligo Road. The area along East Texas Street in Bossier City may also become a black district in the future.

The total black population of Bossier Parish as of 1990 is almost exactly 20 percent, Mr. Joiner said. He said there are currently no concentrations of black population heavy enough to provide for a majority black district.

Bossier Parish is one of only three parishes in the northern half of the state to have a net growth. Caddo Parish lost 4,000 people and Shreveport lost 10,000.

While the police jury has been under the gun to establish new district lines prior to October elections, Mr. Joiner explained that the School Board has the luxury of time. Board members would not campaign along the new district lines until 1993.

Mr. Joiner said his fee is \$35.00 an hour and he estimates his work will take from 200 to 250 hours.

Mr. Musgrove asked that Mr. Joiner provide diagrams of current school board districts with the proposed police jury lines superimposed. He said color-coded maps could be provided.

Dr. Peterson recommended that Mr. Joiner be engaged by the School Board to plan redistricting lines. Motion was made by Mr. Musgrove and seconded by Mr. Harvey. The vote was unanimous.

\* \* \* \*

Excerpts from U.S. Exhibit 27 (Bossier Parish School Board Minutes, Sep. 5, 1991)

[281]

Mr. Gary Joiner, demographer, distributed sets of configuration maps outlining the new legal precincts for the Bossier Parish Police Jury. He requested that the members of the Board complete a survey of concerns. Mr. Joiner plans to work individually with members of the Board and in small groups to develop a reapportionment plan that the Department of Justice will approve.

Excerpts from U.S. Exhibit 28 (Bossier Parish School Board Minutes, Oct. 3, 1991)

[294]

The board discussed the progress of the redistricting of election districts. Mr. Lewis stated that maps and other pertinent information had been sent to Mr. Gary Joiner, the demographer employed to prepare a redistricting plan.

Excerpts from U.S. Exhibit 29 (Bossier Parish School Board Minutes, Oct. 17, 1991)

[300]

Mr. Gary Joiner, demographer, will provide map overlays illustrating the relationship of the present Bossier Parish School Board election districts with the redistricting map approved by the Bossier Parish Police Jury. Excerpts from U.S. Exhibit 30 (Bossier Parish School Board Minutes, Aug. 20, 1992)

[39]

Mr. George S. Price. President of the Bossier Parish Branch NAACP, addressed the Board regarding immediate concerns that affect blacks in the Bossier Parish School System. Mr. Price presented a paper enumerating ten (10) solutions to these concerns: appointment of a black to fill the current vacancy on the Board; 2) development of an early recruitment program for black teachers, 3) diligence in recruiting, hiring, retaining, and promoting African Americans; 4) offering alternate certification to liberal arts majors; 5) development of a reassignment and transfer program to insure parity or equalization of minorities at all schools; 6) organize a recruitment program with predominantly black colleges; 7) encourage parish graduates to pursue education as a major and return to Bossier to work and live; 8) appoint a black to the vacant position in District K; 9) encourage Superintendent and Board to be actively involved in all communities; 10) guarantee participation of every Parish citizen in reapportionment of school board districts.

#### U.S. Exhibit 31

THURSDAY: September 3, 1992

20A

THE TIMES' OPINION

#### [BANNER OMITTED]

#### **VEDITORIALS**

#### **Bossier** board

### Consider minority for vacancy

The facts speak for themselves: Of Louisiana's 66 public school boards, the Bossier Parish School Board is the only one without a minority member. It's also the only board that has *never* had a minority member.

Yet 20 percent of Bossier Parish's population is made up of minority citizens, according to the 1990 Census, and black students make up 28 percent of the system's enrollment.

But 90 percent of Bossier Parish teachers are white, and there are concerns that recruitment of minority teachers is lax.

Today, the Bossier Parish School Board has before it a unique opportunity to bring at least one of those numbers more in line with its constituency. In so doing, the board would offer a strengthened hand of good faith to the parish's minority community, its teachers, students and taxpayers.

With the resignation of District K member Bobby Moseley, its [sic] becomes the School Board's duty to

appoint someone to fill the slot until next spring's election.

Appointing a minority citizen would stand as clear evidence that the board hears—and wishes to address—concerns of minority taxpayers: diligence in minority teacher recruitment, development of a minority-majority student transfer program, encourage more involvement between school system administrators and taxpayers.

Moreover, the board would gain diversity that would put greater perspective on the decision-making table. And those Bossier Parish voters who have felt disenfranchised because of the board's current districts—none of which have majority-black voter registration—would feel newfound representation.

Existing district lines make it virtually impossible for a minority to gain election to the board. And that, understandably, has fostered the feeling among many minority taxpayers that their voice has been muzzled.

The board's district lines are almost sure to change when the parish draws up new boundaries prior to next year's election, and the redistricting likely will allow minority voters a stronger voice at the polls—and, ultimately, on the School Board.

But for now, the Bossier Parish School Board, as a taxpayer-elected body charged with meeting the needs of all its students, should consider the opportunity before it as a good faith way to begin the change. Excerpts from U.S. Exhibit 32 (Bossier Parish School Board Minutes, Sep. 3, 1992)

[50]

Mr. James Abrams, 617 Kelly Street, Bossier City, Louisiana, addressed the Board regarding the appointment of a minority representative to fill the vacancy in School Election District K.

Mr. George S. Price, President of the Bossier Parish Branch NAACP and representing various black organizations throughout the parish, addressed the Board regarding the concerns of the black communities as to representation on the Board; recruitment of black teachers; role models, academic progress and participation in school activities for black students; and redistricting of election districts. Mr. Price presented the NAACP Proposal for Election Districts for the Board's consideration.

[51] The following resolution declaring a vacancy in School Election District K and calling for a special election to fill that vacancy was offered by Mrs. Gray and seconded by Mr. Hensley:

## RESOLUTION AND PROCLAMATION OF THE BOSSIER PARISH SCHOOL BOARD ADOPTED AT THE MEETING OF SEPTEMBER 3, 1992

BE IT RESOLVED by the Bossier Parish School Board in regular session duly convened, that:

I. Acting under and in accordance with the Constitution and laws of the State of Louisiana, including

particularly L.R.S. 18:602 and L.R.S. 18:402, the Bossier Parish School Board does hereby resolve and proclaim that:

- A. Due to the resignation of Robert H. Moseley, effective August 31, 1992, and, acting pursuant to L.R.S. 18:602(B), the Bossier Parish School Board does hereby declare that a vacancy exists in the position of the member of the Bossier Parish School Board from Election District K.
- B. As the unexpired term of office of Robert H. Moseley, School Board member from Election District K, exceeds one (1) year. the Bossier Parish School Board, acting pursuant to L.R.S. 18:602(B) and L.R.S. 18:402(E)(1), does hereby order a special election to fill the aforementioned vacancy with the special primary election to be held on April 3, 1993, and the special general election to be held on May 1, 1993. The qualifying period for the special primary election shall be between Wednesday, January 27, 1993, and Friday, January 29, 1993. Such elections shall be conducted in accordance with the laws of the State of Louisiana
- II. BE IT FURTHER RESOLVED that this resolution and proclamation be immediately published in the official journal of this School Board.
- III. BE IT FURTHER RESOLVED that, within twenty-four (24) hours hereof, a copy of this resolution and proclamation be sent to the Clerk of the District

Court for Bossier Parish and to the Secretary of State of the State of Louisiana by certified or registered mail.

IV. BE IT FURTHER RESOLVED that the Clerk of Court and Secretary of State, and all other officials having responsibilities with respect to said special election and this resolution and proclamation, be requested to perform the duties incumbent upon them.

The vote was as follows:

Yeas: Mr. David Harvey, Mrs. Susan H. Barrera, Mrs. Barbara Blaylock, Mr. Henry Burns, Mrs. Barbara W. Gray, Mr. Boyce "Dude" Hensley, Mrs. Marguerite Hudson, Mr. Barry Musgrove, Mr. Tom Myrick, and Ms. Michelle Rodgers.

Nays: None.

Absent: Mrs. Ruth Sullivan.

The resolution declaring the vacancy in School Election District K and calling a Special Election was adopted.

[52] The members of the Board agreed on the following procedure as read by the President for filling the vacancy until the special election:

PROCEDURE FOR FILLING VACANCY IN SCHOOL ELECTION DISTRICT K UNTIL SPECIAL ELECTION

Persons interested in filling the vacancy in School Election District K until the Special Election may send a letter of intent and a resume to David Harvey, President of the Bossier Parish School Board, P. O. Box 2000, Benton, Louisiana 71006. Letters of intent will be received until 4:00 p.m. on Wednesday, September 9, 1992. Letters received

after 4:00 p.m. or application by phone call will not be considered.

A special meeting of the Board will be held at 5:00 p.m. on Thursday, September 10, 1992, at the Central Office in Benton, Louisiana, to interview those persons who have made written application to fill the vacancy. Interviews will be scheduled alphabetically by last name. Any interested person must attend the interview to be considered for the vacancy.

Following the interviews, the Board will discuss and appoint a member to represent School Election District K until the special election is held. The person appointed will be sworn in at the meeting of September 17, 1992.

Mr. Gary Joiner, demographer, was present to review the legalities involved in the redistricting process according to the 1965 Voting Rights Act. Redistricting is mandated every ten years as based on population reported by the United States Department of Census. The Board is required to submit a plan by December 31, 1992, for the approval of the United States Department of Justice. Mr. Joiner provided maps with proposed district lines and discussed the proposals before the Board for further review before a recommendation is presented.

\* \* \* \* \*

Excerpts from U.S. Exhibit 34 (Bossier Parish School Board Minutes, Sep. 17, 1992)

[61]

Miss Wilna Mabry, Clerk of Court, Parish of Bossier, State of Louisiana, was present to deliver the Oath of Office to Jerome A. Blunt, Election District K.

\* \* \* \*

Mr. George S. Price addressed the Board representing the following organizations: NAACP, Men's Club of Bossier, Voters League, Concerned Citizens, Bossier Housing Tenant Coalition, and the Concerned Parents of Plain Dealing. Mr. [62] Price presented a plan developed by the NAACP for the redistricting of School Election Districts.

Mr. Herschel Brown, 249 W. 77th Street, Shreveport, Louisiana, and Mr. Ed Wempe, 617 Sistrunk, Bossier City, Louisiana, also addressed the Board regarding district representation and redistricting of election district lines.

Mr. Gary Joiner, demographer, reviewed the processes involved in adopting a redistricting plan for election districts for submission to the United States Department of Justice. Mr. Joiner, as the Board's consultant, presented a redistricting plan for the Board's consideration.

A motion of intent to adopt the redistricting plan for school election districts as recommended by the demogapher was made by Mr. Hensley and seconded by Mrs. Gray. The vote was unanimous. The President stated that maps outlining the intended school districts will be on display during office hours for examination by the public until 4:00 p.m. Thursday, September 24, 1992. At 7:00 p.m., Thursday, September 24, there will be an official called meeting of the Board for public input regarding the recommended school election district lines. Input from the September 24 meeting will be considered by the Board and the Board's consultant, and final action will be taken on the redistricting of school election districts at the meeting of October 1, 1992.

. . . . .

Excerpts from U.S. Exhibit 35 (Minutes of Bossier Parish School Board Public Hearing, Sep. 24, 1992)

#### BOSSIER PARISH SCHOOL BOARD

September 24, 1992

#### PUBLIC HEARING

# REDISTRICTING OF SCHOOL ELECTION DISTRICTS

A public hearing on the redistricting plan for school election districts, which had been duly advertised as available for inspection by the public at the Bossier Parish School Board Central Office, was held in an official session at 7:00 p.m. on Thursday, September 24, 1992, at the regular meeting place in Benton, Louisiana. All members of the Board were present except Susan Barrera and Boyce "Dude" Hensley. District Attorney James Bullers was also present, as were members of the staff.

Forty persons registered their attendance. The President welcomed the persons assembled and stated that the hearing was scheduled to receive public input and comments regarding the Bossier Parish School Board's motion of intent to adopt election district lines in accordance with Bossier Parish Police Jury lines, as approved by the United States Department of Justice.

The President opened the floor for public comment. The following people addressed the Board:

Name Address		City	Telephone		
George S. Price	2110 Venus Dr.	Bossier City	746-1737		
James Bullers, D.A.	P.O. Box 69	Benton	965-2332		
Herschel Brown	249 W. 70th	Shreveport	687-7097		
Rev. Dorothy Whitehead	1906 Scott St.	Bossier City	746-2675		
Andrew Davis, Jr.	Rt. 2, Box 288	Plain Dealing			
John Dansby	1912 Camille	Bossier City	742-8472		
Helen Williams Paige	P.O. Box 5580	Bossier City			
Chauncy Wilkins	Box 473	Plain Dealing			
Betty Rettig	Box 1535	Plain Dealing			
Clarence Smith	P.O. Box 483	Plain Dealing	326-5097		
Essie Graham	Rt. 2, Box 107	Plain Dealing	326-4763		
Jerry Hawkins	P.O. Box 334	Benton	965-9038		
Ed Wempe	617 Sistrunk Lane	Bossier City			
Grace Jenkins	P.O. Box 656	Benton	965-0423		
Thelma Harry	902 Wright Ave.	Benton			

There being no further comment, the meeting was adjourned at 8:00 p.m. on motion by Mrs. Blaylock and seconded by Mrs. Hudson. The vote was unanimous.

Excerpts from U.S. Exhibit 36 (Bossier Parish School Board Minutes, Oct. 1, 1992)

[65]

It was moved by Marguerite Hudson and seconded by Michelle Rodgers adopting the following resolution:

#### RESOLUTION

By the Bossier Parish School Board:

A Resolution reapportioning Bossier Parish into twelve school board districts

BE IT RESOLVED, by the Bossier Parish School Board, meeting in legal session convened, that it does hereby establish twelve school board districts which, in total, shall comprise the whole of Bossier Parish, Louisiana.

[66] BE IT FURTHER RESOLVED that the precincts used to comprise the twelve school board districts are the same precincts numbered and described by the Bossier Parish Police Jury and adopted on April 30, 1991 in Ordinance Number 3153 of 1991 and precleared by the U.S. Department of Justice on July 29, 1991 and that those enumerated precincts shall be apportioned as follows among the twelve respective school board districts, to wit:

#### DISTRICT ONE:

Precinct 4-3C, Precinct 4-5, Precinct 4-6, Precinct 4-7, Precinct 4-8B, and Precinct 4-9.

#### DISTRICT TWO:

Precinct 4-3B, Precinct 4-4, and Precinct 4-11B.

#### DISTRICT THREE:

Precinct 2-1, Precinct 2-18B, Precinct 2-22, Precinct 4-2, and Precinct 4-3A.

#### DISTRICT FOUR:

Precinct 2-18A, Precinct 3-1, Precinct 3-2, Precinct 3-3, Precinct 3-4, Precinct 4-1, and precinct 4-3D

#### DISTRICT FIVE:

Precinct 2-3, Precinct 2-17A, Precinct 2-21B, Precinct 4-11A, and Precinct 4-11C.

### DISTRICT SIX:

Precinct 2-2, Precinct 2-4, Precinct 2-7, Precinct 2-10, Precinct 2-18C, and Precinct 2-21A.

#### DISTRICT SEVEN:

Precinct 2-5, Precinct 2-6, Precinct 2-8, Precinct 2-9, and Precinct 2-12B.

#### DISTRICT EIGHT:

Precinct 2-11, Precinct 2-12A, Precinct 2-17B, and Precinct 2-19.

#### DISTRICT NINE:

Precinct 2-12C, Precinct 2-13, Precinct 2-14, Precinct 2-20, and Precinct 2-23.

#### DISTRICT TEN:

Precinct 2-15 and Precinct 2-16.

#### DISTRICT ELEVEN:

Precinct 1-2, Precinct 1-3, Precinct 1-4, and Precinct 1-5.

#### DISTRICT TWELVE:

Precinct 1-1, Precinct 4-8A, Precinct 4-8C, and Precinct 4-10.

BE IT FURTHER RESOLVED, THAT if any provision or item of this resolution or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications which can be given effect without the invalid provisions, items or applications, and to this end, the provisions of this ordinance are hereby declared severable.

[67] BE IT FURTHER RESOLVED, THAT all resolutions or parts of resolutions in conflict herewith are hereby repealed.

YEAS:

David Harvey, Susan H. Barrera, Barbara Blaylock, Henry Burns, Boyce "Dude" Hensley, Marguerite Hudson, Barry Musgrove, Tom Myrick, Michelle Rodgers, and Ruth Sullivan. NAYS: None.

ABSTAIN: Jerome A. Blunt.

ABSENT: Barbara W. Gray

The resolution was adopted by a vote of 10 yeas, 0 nays, 1 abstain, and 1 absent.

In the discussion before the official vote, Mr. Blunt expressed appreciation for the concerns of the coalition of minority citizens who had participated in the process of redistricting and encouraged the members of the Board to involve and cooperate with the minority coalition in the operation of board and school programs so that they might feel part of the whole community. Later in the discussion, Mr. Blunt stressed the need for cooperation with any coalition, whether black or white, who address the Board through interest or concern for the children of Bossier Parish.

Mr. Myrick stated for the record, "The Board worked on reapportionment for over a year. The redistricting plan was discussed extensively in various groups. There was a lot more involved than the issue of black and white. Other considerations of personal ambition or opinion must give way to public good. It isn't easy to develop a plan to please everyone. The Board has functioned as fairly as possible working through the democratic process of majority rule."

Mr. Hensley stated for the record that members of the Board truly represent everyone in their districts and said that he has done so both as school principal and as a board member.

## CHRONOLOGY OF EVENTS

Jerome Darby elected to Policy Jury.			
Police Jury hires Gary Joiner to develop redistricting plan.			
Police Jury Finance Committee appoints Technical Advisory Reapportionment Committee to work with Joiner on redis- tricting; Jerome Darby not included on the Reapportionment Committee.			
Darby protests exclusion from Committee as a denial of "equal representation"; Policy Jury votes to appoint him and white Juror James Elkins on the Committee.			
Police Jury passes over Jerome Darby for Presidency of Police Jury.			
Joiner meets privately in his office with groups of 2 toor 3 Police Jurors to discuss district configurations in their area. School Board member Thomas Myrick attends some of these meetings; meets with Joiner approximately five times.			

- April 1 Statutory "window" under Louisiana law to Police Juries to subdivide election May 15 precincts for redistricting purposes.
- April 9 Public Police Jury redistricting hearing. Joiner presents 3 proposed plans, states that precinct splitting would be allowed through 5/15/91.
- April 25 Public Police Jury redistricting hearing.
  Black residents ask questions regarding black-majority district; are told that black population is too scattered to allow black district. Police Jury votes to pursue Joiner's Plan 9 for final adoption at next meeting.
- April 30 Public Police Jury redistricting hearing.
  Joiner states that precinct changes could
  be made after 1/1/93 so as to consolidate
  precincts and reduce administrative election costs. Police Jury adopts Plan 9 as
  final plan. Concerned Citizens present
  letter to Police Jury complaining about
  redistricting process.
- May 2 Joiner attends School Board meeting; is hired by School Board; estimates 200-350 hours to complete redistricting. Joiner states that School Board has more than adequate time to draw districts since the next School Board election is not until 1994.
- May 14 Jerome Darby discusses Concerned Citizens letter at Police Jury meeting.

May 28 Police Jury submits Police Jury Plan to Department of Justice.

July 29 Department of Justice preclears Police Jury plan.

Sept. 5 First School Board meeting at which redistricting discussed in substance. Joiner distributes precinct maps; states that School Board would have to work with Police Jury to alter precinct lines if it favored a plan which split precincts. Myrick immediately suggests adoption of Police Jury Plan.

#### 1992

March 25 NAACP representative George Price writes letter to Superintendent Lewis requested that NAACP be included in all phases of redistricting process; letter distributed to School Board members. No action taken on letter.

July 22 Hays v. Louisiana (Hays I) filed in federal district court.

Sometime Jointer meets privately with School Board members, demonstrating redistricting computer and showing alternative redistricting scenarios. NAACP not notified of meeting.

Aug. 7 District court in *Shaw* v. *Barr* dismisses plaintiff; 14th Amendment gerrymander-

ing claim as failing to state a cause of action.

- Aug. 17 Price writes second letter to Lewis, requesting that NAACP be allowed to come before the School Board to present their views on redistricting, and stating opposition to PJ Plan or any other plan diluting minority voting strength.
- Aug. 20 Price presentation at School Board meeting re: various concerns, including appointment of black School Board member to fill an existing vacancy, and participation of all parish citizens in redistricting. No specific action is taken by School Board on these requests.
- Aug. 25

  Price presents NAACP may of 2 illustrative black- majority districts to school and district official, who rejects plan because it does not 8/27/92 contain a full 12 districts.
- Aug. 26 Preliminary injunction hearing in Hays v. Augu. 27 Louisiana (Hays I) in federal district court.
- Aug. 27 District court in *Hays I* denies plaintiffs' motion for preliminary injunction, discusses plaintiffs' constitutional claims, allows briefing on Section 2 vote dilution claims only.
- Sept. 3 Price presents full, 12-district NAACP Plan at School Board meeting. Jointer and School Board members summarily dismiss

NAACP Plan because it crosses existing precinct lines.

- Sept. 10 Jerome Blunt Appointed as first black School Board member in Bossier Parish history by a 6-5 vote at a special School Board meeting.
- Sept. 17

  Jerome Blunt sworn in as member of School Board. At same School Board meeting, Price again presents NAACP Plan on behalf of the NAACP, Concerned Citizens of Bossier Parish, Men's Club of Bossier, Voter's League, Bossier Housing Tenant Coalition of Concerned Parents of Plain Dealing. School Board unanimously passes a motion of intent to adopt the Police Jury Plan, schedules 9/24/92 public hearing and 10/1/92 meeting for final action.
- Sept. 24 School Board hearing on redistricting held with full- capacity crowd. Price presents petition with over 500 signatures, urges consideration of NAACP Plan as a foundation for the creation of a plan with black-majority districts.
- Oct. 1 At School Board meeting, School Board adopts Police Jury Plan 10-1-1, Jerome Blunt abstaining (on member absent).
- Dec. 31 Date under Louisiana law by which school boards must reapportion.

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- Jan. 1 Date under Louisiana law after which parishes could reconsolidate their precincts.
- Jan. 4 School Board submits plan adopted by Police Jury ("Proposed School Board Plan") to Department of Justice.
- Jan. 26 "Community Affairs Committee," formed at request of black community, holds its first meeting to discuss School Board matters.
- March 5 Department of Justice asks School Board for more information re: redistricting plan.
- March 16 School Board disbands Community Affairs Committee.
- June 29 Supreme Court issues opinion in Shaw v. Reno
- Aug. 19 Supplemental evidentiary hearing in Hay v. Louisiana (Hays I)
- Aug. 30 Department of Justice objects to School Board's Proposed Plan. Objection letter points out the School Board's option of asking the Police Jury to change precinct lines to allow drawing of black-majority districts.

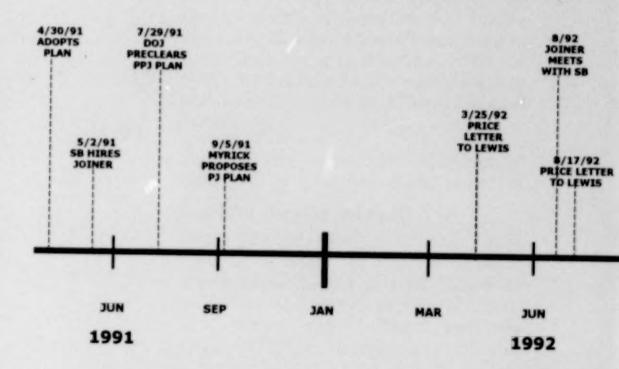
- Aug. 31 Copies of Department of Justice objection letter provided to all School Board members.
- Sept. 2 In executive session at School Board meeting, School Board discusses its options in light of Department of Justice objection. No discussion of attempting to draw black-majority districts occurs. In public, School Board unanimously votes to seek reconsideration from Department of Justice.
- Sept. 3 School Board seeks reconsideration of objection in letter to Department of Justice.
- Sept. 16 Price presentation at School Board meeting on behalf of coalition of black organization asking School Board to reconsider its decision to seek withdrawal of objection. School Board does not respond to Price's suggestion.
- Dec. 20 Department of Justice declines to withdraw objection.
- Dec. 28 LA district court issues decision in Hays v. Louisiana

<u> 1994</u> -

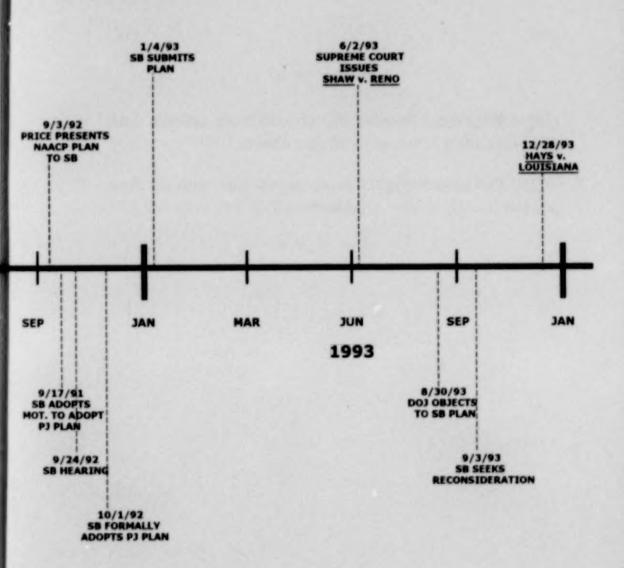
- Jan. 11 Police Jury resolves not to redraw its redistricting plan.
- July 8 School Board files Bossier Parish School Board v. Reno.

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## CHRONOLOGY



## **OF EVENTS**



Excerpts from Government Exhibit 86 (Designations of portions of Deposition of School Board Member Susan J. Barerra dated September 30, 1994)

[60]

Q. Why does Bossier Parish still have schools with predominantly black student enrollment?

A. Because those people have not moved into predominantly white neighborhoods.

\* \* \* \* \*

Excerpts from Government Exhibit 87 (Designations of portions of Deposition of School Board Member Barbara Blaylock dated October 6, 1994)

[97]

Q. Why does Bossier Parish have predominantly black schools?

A. Have predominantly black? Probably because of just the area in which they are.

\* \* \* \* \*

Excerpts from Government Exhibit 90 (Designations of portions of Deposition of School Board Member Henry Burns dated October 6, 1994)

[119]

- Q. Why does the Bossier Parish school district have schools with predominantly black student enrollment?
- A. Why do Bossier Parish schools have schools that have predominantly black enrollment? Well, I am only, like, high schools or elementary schools.
- Q. Well, for example, Butler Elementary School. Why, in your view, is Butler Elementary School a predominantly—first of all, are you aware that the district has schools that are—
- A. Yes, like Plain Dealing and brand [sic] Bossier High. I am pretty well familiar with the percentages at most of the schools, but I think the neighborhood school concept.

[120]

- Q. And Butler Elementary School and Bossier Elementary School are also near one another; isn't that true, are physically near one another?
  - A. Yes.
- Q. What about Plain Dealing High School and Plain Dealing Elementary School is that the same?

[121]

- A. Yes. They are located in the northern, you know, rural part of the parish.
- Q. I take it their predominantly black student enrollment, in your view, is due to the demographic makeup of the area of their attendance boundaries?

A. Yes.

\* \* \* \* \*

Excerpts from Government Exhibit 93 (Designations of portions of Deposition of School Board Member Barbara Gray dated September 19, 1994)

[68]

- Q. When you were talking about the two areas where you though it would be possible, if you sat aside concerns about splitting precincts to conceivably draw a black majority district, you [69] mentioned the Plain Dealing area and you also mentioned district G, Ms.
- Sullivan's district, when you talk about District G, are you talking about District G in the current plan as opposed to the proposed plan?
- A. The current plan that we have, that is what I am referring to.
- Q. Let me hand you what I have marked as School Board Exhibit Eleven and let me just ask you, is that the old plan from the 1980s, the one that current school board members are sitting under?
  - A. Yes.
- Q. On that document, is that the District G that you are talking about?
- A. Yes. Wait a minute, let me see. No. No. District J is the one. And possibly G, but I would say J over G first. I got G and J confused and I am sorry.

- Q. Both of those districts are in the Bossier City area?
  - A. Right.
- Q. And District G is the district that contains or is quite near Bossier Elementary and Butler Elementary?
  - A. Yes.

[70]

- Q. Which are both predominantly black elementary school[s], right?
  - A. Yes.

\* \* \* \* \*

[71]

Q. And, isn't it a fact that today Butler is a predominantly a black school?

A. It may be. Yes.

- Q. And isn't it a fact that when you joined the board—?
- A. That is not—that is just because that is where they happen to live.

- Q. And I guess that the same would be true for Bossier elementary school, which is even more predominantly black?
- A. That happens to be, I guess, where they have their population that feeds the school.

Excerpts from Government Exhibit 94 (Designations of portions of Deposition of former Bossier Parish Administrator James Ramsey dated October 13, 1994)

[14]

- Q. You also mentioned that the school board operates under different criteria with respect to redistricting from the Police Jury, correct?
- A. They have different considerations that they have to look at, yeah. They did. They don't any more, but they did at that time.
  - Q One example you gave was taxing districts?
  - A. I would say that was the main.
  - Q. Could you explain what taxing districts are?
- A. The parish was divided into—I don't remember now how many taxing districts. They were for the purpose of financing the school plans in those different areas. It was geographically divided, like Haughton and Plain Dealing and Bossier City was divided into I don't know how many. I wasn't familiar with them. But, anyway, those were districts. When they made the determination, they [15] being the school board, that they wanted to increase plant size or school size, the people of those districts were called upon to vote for

a bond issue, a bond election to finance those. And it don't cost anybody outside that district.

- Q. Was the bond election held only within the taxing district?
  - A. Yes.
- Q. What other differences were there between the school board and the Police Jury regarding these criteria? One example is taxing districts.
- A. You mean difference between the Police Jury and school board as elected bodies?
  - Q. Yes.
- A. They wasn't anything similar. I mean, they were responsible to the children and the education part of the parish. The Police Jury's responsibility was for road, bridges, primarily, and drainage of their system, plus they were the governing agency or governing body of the parish. They adopted laws and ordinances and things that regulated certain activities. Zone property, we did. You know, they weren't even tied. They were two totally separate entities.

Excerpts from Government Exhibit 95 (Designations of portions of Deposition of School Board Member Juanita Jackson dated September 29, 1994)

[10]

- Q. Do you know if there are any other incumbents that would be pitted against one another under the proposed school board plan?
- A. My understanding is that Mr. David Harvey and [11] Ms. Barbara Gray would be against each other if they both decided to run.
  - Q. Do you know if they are planning on running?
  - A. Ms. Gray had said that she is not.
  - Q. Do you know why she is not running?
- A. I believe her comment has been that she has served numerous times, or years, and she wants to spend time with her grand children and family.
  - Q. Do you know if Mr. Harvey is going to run?
- A. I understand that he is, but I have not spoken with him personally.
- Q. Are you aware of any other incumbents that are pitted against one another?

A. No.

[36]

- Q. Why does the school district still have predominantly black schools?
- A. Our attendance lines determine where a person would go to school and if the area surrounding that school is predominantly black, that is where they would go to school.
- Q. Where are those areas that are predominantly black?
- A. Plain Dealing. And I do not [know] if there are any others that are predominantly black.
- Q. Are you aware that Bossier Elementary School is predominantly black attendance?
- A. I know that we do have blacks and whites attending there, but I do not know what the racial makeup is.

[37]

Q. Are you aware that Butler elementary school is [37] also predominantly black?

- A. Because of the location of those schools, if the area surrounding them is predominantly black, then they would be predominantly black, but I really do not know.
- Q. They are in the Bossier City area; is that correct?
  - A. Yes.
  - Q. And they are [near] one another?
  - A. Yes, they are.

Excerpts from Government Exhibit 96 (Designations of portions of Deposition of Bossier Parish Registrar of Voters William Johnston dated October 12, 1994)

[10]

- Q. Okay. You change and realign precinct boundaries even separate and apart from reapportionment, correct?
  - A. We do, yes.
  - Q. How-about how often do you do that?
- A. Oh, three or four years, every three or four years.
- Q. When you do the precinct realignments you can take a larger precinct and split it into two—that might be one thing you could do, correct?
  - A. You could.
- Q. Another thing you might do is take two smaller precincts combine them into one, correct?
  - A. You could.
  - Q. That's called a precinct consolidation?

[11]

- A. Uh-huh. (Affirmative)
- Q. And you could actually split a large precinct into more than two if you wanted to, correct?
- A. Well, it depends on a lot of—on certain situations.
  - Q. Okay. Tell me about that.
- A. Well, it depends if it's inside the city limits or outside the city limits. In other words, the precinct has to be wholly within or without the city limits. In other words, you can't take a precinct and have part of it in and part of it outside the city limits.
- Q. So you couldn't consolidate a precinct outside the city limits with one that's inside the city limits?
  - A. No.
- Q. But you could consolidate two precincts that were inside the city limits together?
- A. We could if it was approved by the Justice Department.
- Q. And you could consolidate—two precincts that were outside the city limits you could consolidate them together?
  - A. If it was approved by Justice Department.

Excerpts from Government Exhibit 97 (Designations of portions of Deposition of School Board Member David L. Harvey dated September 30, 1994)

[60]

- Q. And at this point, do you intend to run again?
- A. Yes.
- Q. Who would be your potential incumbent opponent?
  - A. Ms. Gray.
  - Q. Do you know if she intends to run again?
- A. I can only tell you what she has said to me, that she does not intend to run for reelection, however, that change, if she disagrees with me about something, she may decide—

[62]

Q. Are you aware of what the district's obligations are under the consent decree?

- A. No. I am not familiar with it.
- Q. Why is it that the Bossier Parish school district has predominantly black schools?
  - A. Predominantly black schools.
- Q. Yes. Schools with predominantly black student enrollment?
- A. I would suppose it has to do with the fact that our schools are set up on what I would regard as the neighborhood school concept. Children attend school at a school near their home. I do not know, historically back years ago when busing was a real hot issue in many parts of the country, [63] at that point, I was not involved in school board activities. I do not even remember if I had any children at that time. I do not know if busing was an issue here to get children moved around for purposes of racial balance or anything like that. It is just, ever since I have been a resident of Bossier Parish, we have more or less, and I am using my own term, my [sic] operated on the basis of a neighborhood school concept.
- Q. If Butler Elementary School and Bossier Elementary School were both predominantly black schools, it would be largely because they are in black neighborhoods?
  - A. I would suspect so, yes.
- Q. Why is it in your view that Plain Dealing Elementary and Plain Dealing High School are predominantly black?

A. Those schools are located in rural parts of the parish and, I believe would more than likely be populated by predominantly black families. It seems to make sense to me.

Excerpts from Government Exhibit 98 (Designations of portions of Deposition of School Board Member Boyce Hensley dated September 30, 1994)

[28]

- Q. Mr. Hensley, I am going to show you what has been marked as Exhibit Number Eight. I do not believe that you have seen this. That has been identified as a letter from Mr. Price, representing the NAACP. Could you describe the substance of that letter, what is Mr. Price requesting in that letter?
- A. He is asking that we, as a school board, allow him to take part in the drawing process, I guess, of the new district[s].
  - Q. What is the date of that letter?
  - A. March 25th, 1992.
  - Q. Do you ever recall seeing that letter before?
- A. Yes, Ma'am. I had a copy of this in one of my packets when we met as the school board.
  - Q. Who gave you that packet?
- A. Each member of the school board receives a packet each time that we have a board meeting, which is on the first and third Thursday of each month at 7:30.

Q. Which packet was this letter included in, was it included in the March 25th, 1992?

[29]

- A. No, It would probably be in April. We probably already met twice when this was there. It was probably in April.
- Q. Why do you think that that was when it was probably included in your packet?
- A. Because the superintendent always, when he gets something that is addressed to the board, he places it in everybody's packet that they get at the next board meeting.
- Q. So, it would be custom, for Mr. Lewis' practices, in informing the school board of letters that he got to include it in a packet that would come to come to [sic] every board member before a regular meeting, that would have been included in some packet sent to you by Mr. Lewis?
- A. No, ma'am. It probably would have been in the packet that we receive[d] the first Thursday in April.
  - Q. So, he would have included it in the packet-
  - A. At the next meeting.
  - Q. Right after he received it.
  - A. That is correct.

- Q. It is because of that custom that you think, and tradition that you think you received that letter at that meeting.
  - A. Yes, Ma'am.

[30]

- Q. But you have seen that letter before?
- A. Yes, ma'am.
- Q. Every board member would have received that letter at the same time you did; is that correct?
- A. In the twelve packets that are made, they are all exactly alike and I am sure that when I got one, that they each got one.

[73]

- Q. Why does the Bossier Parish public school system have predominantly black schools today?
- A. Because of the location of the school and the community concept.
- Q. So, [Butler] Elementary School and Bossier Elementary School are predominantly black schools

because they are in predominantly black neighborhoods?

- A. That is correct.
- Q. And, in fact, they are contiguous, their attendance zones are very near one a other, those two schools?
  - A. Yes, sir.
- Q. Similarly Plain Dealing Elementary School and Plain Dealing High School are predominantly black [74] in your view, for what reason?
- A. Because the people that live in that area, the neighborhood system there, the percentage is higher with black than it is in the Airline district.

Excerpts from Government Exhibit 99 (Designations of portions of Deposition of School Board Member Marguerite Hudson dated September 29, 1994)

\* \* \* \* \*

[13]

- Q. Do you know what the percent of—the black percentage student enrollment is in the public schools in Bossier Parish?
- A. No, but I could know. It is certainly not anything like with Caddo has. It is around—I [14] don't know. I would rather not guess on the record. I have an idea though.
  - Q. What is your idea?
- A. Well, it is not 20 percent. I don't believe it is 20 percent.
  - Q. Is it more or less?
  - A. Less.
  - Q. Less than 20 percent black students?
- A. Yes. But that's—I really don't like to go on the record with being that vague.
- Q. What is the minority student enrollment in Caddo Parish? Approximately?

- A. It is more than 50 percent. It is about 60/40, I believe. This is common understanding. I am not sure that it is valid figures.
- Q. Does that make a difference between the two parishes and the school system?
  - A. Their ratio as contrasted to our ratio?
  - Q. Yes.
  - A. It does.
  - Q. And what is the difference?
  - A. You are asking me, "Does it make a difference?"
  - Q. Yes.
- A. And it makes a difference in that some [15] people from Caddo, a good many people have moved to Bossier Parish, in order to get to a school system which has a higher white ratio to blacks. That is one of the reasons that the parish, Bossier Parish is increasing in population, as much as it is. That is just about it.

[85]

\* \* \* \* \*

Q. Why is it that the [sic] Bossier Parish has predominately black schools, in 1994'

- A. Well, the black children's parents do not have cars to transport them to white schools.
- Q. So the District doesn't provide transportation for a majority/minority plan?
- A. We would. We do. We have that written into our policy. And we would. They do not want to go to a majority white, they want to stay right with their own. They know that they can go to a majority white. They want to stay right with their own.

They know that they can go from majority to minority, I mean, from minority to majority, and we would give them transportation. They can get a—

Q. So why are there predominately black schools?

[86]

- A. They like to go to school with their community.
- Q. So it is a question of residential area[s], that are predominately black?
- A. Right. Right. It is fiction that they want to go out there, and be with some people that they are not like.

Q. So,-

A. —you just go into one of these schools, and just ask them.

- Q. So, Butler Elementary School, and Bossier Elementary School, are predominately black schools in your view, because they are in predominately Black neighborhood in Bossier City?
  - A. Certainly. Certainly.
  - Q. An the new one, that is?
- A. Right. I believe our policy says that they would have to, I don't know about the transportation. I would need to look at the written policy.
- Q. What about Plain Dealing Elementary, and Plain Dealing High School, those are also predominately Black schools, aren't they?
  - A. What about it?
  - Q. They are predominately Black schools.

[87]

- A. What do you want me to say about it?
- Q. Yes, or no?
- Q. Oh, they are. And those people love to live in Plain Dealing. They love to live up there.
  - Q. Okay.
- A. And most of them don't want to get a big job, they would just rather stay out there in the country, and stay on Welfare, and stay in Plain Dealing.

[96]

\* \* \* \* \*

Q. Okay, would you say—are you familiar at all with Bossier City?

A. Oh, indeed.

Q. Okay. Would you say that there are indeed, [97] communities within the city of Bossier City?

A. Well, there are two, basically, Black communities, within the city, wherein, you probably could, if you could get away from this precinct business, you could come up with some kind of district, Black district. Old Bossier, and Northgate, as I call it.

Q. Yes.

A. Northgate is this over here by Barksdale, on the North end of Barksdale, and that is where a person, who—

Q. Excuse me. Could you show me where old Bossier is on that map?

A. Down in here.

Q. Let the record reflect that the witness is pointing to the left central portion of the City of Bossier.

A. And it would make a lot of sense because you have Butler, and Bossier, Bossier Elementary,

Excerpts from Government Exhibit 100 (Designations of portions of Deposition of School Board Member Michelle Rodgers dated September 30, 1994)

[14]

Q. Where is the black population in Bossier Parish?

A. Well, there is quite a bit around Plain Dealing. There is quite a bit in my district.

Q. Where, specifically, in your district?

A. In the area around Butler Elementary. And Bossier Elementary.

Q. Could you describe that in terms of the city?

A. In terms of the city, Scott Street, Green Street, those areas of Old Bossier.

Q. So, Old Bossier is in your district?

A. Yes. There is another large area of blacks in [15] Ms. Sullivan's district. They refer to that as Jack's quarters.

Q. That is in the city of Bossier?

A. Yes.

[100]

\* \* \* \* \*

- Q. Why is it that the Bossier Parish school district has predominantly black schools? Why is it that the Bossier Parish school district has predominantly black schools?
- A. I can only think of two in the parish that would be predominantly black.
  - Q. What are those?
- A. Butler Elementary, which is in my district. And probably Plain Dealing would be predominantly black.
  - Q. Why are those schools predominantly black?
- A. I would assume that Plain Dealing, well, first of all, Plain Dealing has a private school, Plain Dealing Academy and a lot of kids in that area go to that private school. There are also a lot of black people who live in that area. Mr. Myrick could better answer that since he is more familiar with the Plain Dealing area.

Butler Elementary is in the opposite section of my district. I do not live very close to there, but there are black neighborhoods [101] surrounding that school.

Q. Why is Bossier Elementary a predominantly black school?

- A. Well, it is geographically very close to Butler Elementary.
- Q. Why is Plantation Park Elementary School a predominantly black School?
- A. There is a housing project down the street from Plantation Park, which I believe is predominantly black.

Excerpts from Government Exhibit 101 (Designations of portions of Deposition of School Board Member Ruth Sullivan dated September 29, 1994)

\* \* \* \* \*

[83]

\* \* \* \* \*

- Q. Why do you still have predominantly black schools in the Bossier Parish school district?
- A. One is because Butler, when we tried to move, get an equal, move those kids from Butler, the people rose up in arms and said, "We want our neighborhood school," and we did everything that we could to make sure that they had their neighborhood school. And, Butler is one of our predominantly black schools.
- Q. Butler is in a black neighborhood, that is why it is a predominantly black school?
  - A. Yes.
  - Q. What about Bossier Elementary School?
  - A. Same difference.

Excerpts from Government Exhibit 102 (Direct Testimony of former School Board Member Jerome Blunt dated April 10, 1995)

[3]

- 5. I wanted to serve on the school board for the same reasons that I served on other policy making bodies. I was concerned as a parent about what my children were being taught. I enjoy being on the policy making end of things and felt that with my background as a parent and my work in special education. I could make a significant contribution to the school district.
- 6. I also felt that it was important to have minority representation on the school board. Blacks in Bossier Parish do not feel a part of the school system. They feel that, because they do not have representation on the board, they do not have a voice in the decision making and that they are unable to bring about change in the school system. Minority groups, such as the NAACP and the Bossier Concerned Citizens Association, have worked [4] together and presented their issues as a coalition in an attempt to bring to the attention of the school board that the concerns of the black community are not isolated incidents, but real concerns of blacks throughout the parish. The black community's feelings that the school board does not take their concerns seriously are justified because the school board has not been responsive to the concerns raised by the coalition. The most recent example of this lack of responsiveness

that I can think of is the board's reluctance to provide the minority coalition with information they had requested relating to the disparities in graduation rates or suspension and expulsion rates between white students and black students. Some of the members of the board are convinced that Mr. Price, president of the local chapter of the NAACP and spokesperson for the minority coalition, is only interested in information like this so that he can use it against the school board. Because of this attitude, they miss the fact that the members of the minority coalition are genuinely interested and concerned about our young people and request information like this so that they can better understand the problems facing our black school children. They wish to work with the school system to develop policies aimed at addressing the needs of black students.

- 7. I also wanted to be on the school board because I believe that it is important for our young people to see minorities elected to public office or in positions of influence in the community to serve as role models. It is for this reason [5] that I had hoped, as a member of the school board, to be able to improve the school district's policies on the recruitment and hiring of black teachers. I do not believe that it is just lower salaries that keep black teachers from accepting positions in our school system. The board's current policies do not do enough to point out that the Bossier Parish school system has a lot to offer black teachers who are interested in really making a difference in the world.
- 8. I took the oath of office as a school board member on September 17, 1992, at the end of the board's redistricting process. At the same meeting, the

NAACP presented, for a second time, a map of a redistricting plan for the Bossier Parish School Board that created two black-majority districts. The board did not take the NAACP plan seriously and never gave the plan any serious attention. School board member Boyce Hensley called the plan "ridiculous." School board member Ruth Sullivan, in response to the idea of creating black-majority districts to provide an opportunity for elected black representation on the board, remarked that she could represent blacks as well as a black could.

9. It was my impression, by the time I took office, that the members of the board had already decided informally to adopt the police jury plan, which had no black-majority districts. In fact, at the September 17, 1992 school board meeting, the board passed a motion of intent to adopt the police jury plan and adopted the plan at the next board meeting on October 1, 1992.

[6]

10. In between the September 17 and the October 1 meetings of the school board, I participated in discussions with other school board members regarding the merits of the police jury plan and the NAACP plan. In particular, I recall a discussion at the September 24, 1992, public hearing on the plan about the opposition to the police jury plan presented by Mr. George Price on behalf of the minority coalition. Mr. Price stated that he had consulted with the national chapter of the NAACP and that their lawyers agreed that the police jury plan violated the Voting Rights Act because it did not fairly represent minority voting strength. Price further stated that the board's concerns about the

splitting of precincts in violation of state law was superseded by the necessity to comply with federal law. I thought that Mr. Price's presentation raised some concerns that the board needed to address, but there was no further discussion about adopting a plan that was more fair to blacks. I was surprised that some of the board members like Barry Musgrove and Tom Myrick, who had earlier expressed concern about adopting a redistricting plan that met with the approval of the Justice Department, were so willing to ignore the issues raised by the local and national chapters of the NAACP. In fact, I would say that Tom Myrick was one of the most vocal supporters of the school board adopting the police jury plan.

11. To my knowledge, the school board never asked Mr. Joiner about attempting to come up with a plan of his own that might facilitate black representation on the board.

[7]

12. I abstained from voting on adopting the police jury plan at the October 1, 1992 school board meeting. I felt the police jury plan was not fair to blacks and that by abstaining I would draw more attention to this fact. I made a statement before the final vote on the plan. While I do not recall the exact words I said, the intent of my statement was to make a plea to the board to listen to and to work more closely with the minority coalition in an effort to make the minority community feel more a part of the system. I recall that I also voiced my concern about the lack of minority representation on the school board and that the police jury plan would do nothing to change that. There was no

response from any of the school board members to my statement.

- 13. I recall that Mr. Price appeared before the school board on a few other occasions after the police jury plan had been adopted to appeal to the board to change their minds. The school board, however, considered reapportionment "a done deal" and were not interested in pursing this matter any further.
- 14. No single issue that I can recall created more bitter feelings between the black and white communities than the school board's sudden disbandment of the Bi-Racial Committee in early 1993. The Committee was re-established at the request of the minority coalition to respond to their repeated requests that the school board address certain issues, such as the hiring of more black teachers. It is my understanding that a bi-racial committee was required as a part of the lawsuit brought in the [8] 1960s to integrate the school system, but that such a committee had never really been established.
- 15. The black community saw the establishment of the Bi-Racial Committee as a victory and an opportunity to have real input into the policy making of the school system. The committee met only once that I recall, however, before the board decided to disband it. I was not privy to the discussions by members of the school board to disband the committee. I was later told by school board member Barry Musgrove and Mr. Lewis, the Superintendent of Schools, that the reason the board disbanded the committee was because an influential white person in the community had threatened to sue the school board if they formed a committee to

address concerns of the black community and did not have a similar committee to address the concerns of the white community.

- 16. On April 3, 1993, I ran unsuccessfully to retain my seat on the school board in a special election. My opponent was Juanita Jackson. I ran a positive campaign based on my credentials and my brief record as a school board member. I actively campaigned and financed the campaign myself, with some financial assistance from a few individuals. I believe that I lost the election because the district I ran in, District K, was predominately white. I had a conversation with school board member Barry Musgrove during my campaign in which he stated that he felt that I would have a tough time getting elected. I took that to mean that he was acknowledging that a lot of the white [9] residents of the district, particularly in South Bossier, would not vote for me because I am black.
- 17. I was present in the courtroom on April 10, 1995, during the plaintiff's presentation of its case. In response to certain testimony offered by witnesses for the school board, I have the following supplemental testimony. During the time I was a member of the Bossier Parish School Board, I do not recall any member of the Bossier Parish School Board refer to the NAACP plan as a racial gerrymander. I do not recall any discussion to the effect that the NAACP plan split too many precincts and therefore would increase costs to conduct elections.

Excerpts from Government Exhibit 104 (Direct Testimony of former Bossier City Council Member Jeff Darby dated December 8, 1994)

[3]

. . . . .

- 8. In 1989, I ran for the Bossier City Council in District 2 and became the first black ever elected to that body. In the primary, I ran against Anthony Provenza, the incumbent and another white challenger, Don Brown. I came in second, behind [4] Brown, thus eliminating the incumbent. Mr. Provenza, although he had served on the city council for 12 years, had fallen out of favor with the residents of his district. There was also a question raised during the campaign regarding whether or not he had moved and no longer resided in the district. I eventually won the run-off election by 36 votes.
- 9. I campaigned hard in my election to the Bossier City Council, and I had good name recognition in the district. I had grown up in this area and gone to school with many of the residents or with their children. Also, District 2 encompassed a lot of the same area included in Police Jury District 10, where my brother, Jerome, was serving as the Police Juror. District 2 also bordered the Barksdale Air Force Base and many of the residents of the district, in neighborhoods like Pecan Park, were not born and raised in Bossier Parish but rather came here to live because of the base. Unlike a lot of the white natives of Bossier Parish, for

many of these residents, my race was not an obstacle to them looking at my credentials and seeing that I was more qualified to represent them than my opponent. I believe that the fact that they had worked side-by-side with blacks on the base had a lot to do with why my race was not a barrier for them. I believe that it was this unique composition of white residents that allowed me to gain enough white votes to win. I do not believe that I could accomplish this in any other area of Bossier City or Bossier Parish.

. . . .

[8]

. . . . .

17. I ran for reelection under the new plan in October, 1993, against a white challenger, James Sawyer. Despite the fact that I campaigned as hard as I had in the past, I lost the election by 58 votes. I believe I lost the election because I lost my base of support in the redistricting. I also had in my new district a white area of "Old Bossier" that is the least integrated in the city. The voters from that area would not be likely to vote for a black candidate.

. . . . .

Excerpts from Government Exhibit 105 (Direct Testimony of Bossier Parish Police Juror Jerome Darby dated April 4, 1995)

[11]

. . . . .

- 19. I am in my third term as Police Juror. In my first election in 1983, I ran against the black incumbent in district 10 and a white challenger in the primary. The incumbent lost, and I ran against the white candidate in the run-off. One of the reasons the incumbent (who had been in office for only one term) lost was because there was some concern raised that he did [12] not even live in the district. The white challenger didn't campaign at all, assuming that he would just win because it was a white majority district. I campaigned hard and won by a narrow margin. Counsel for the United States informs me that it has been stipulated to by the parties that my district was 37.9 percent black at the time of this election.
- 20. Another major reason for my election is the unique nature of my district at that time. My district includes the area in and around Barksdale Air Force Base. There are a lot of military personnel there who do not vote, so that the percentage of voters who are black is actually higher in my district than one would think based on the black total population percentage. Also, many of the whites who do vote in the district are military retirees who are from outside the parish, from all parts of the country, and who are more likely to be

open-minded about voting for a black candidate than local white residents in the rest of the districts. A number of the military persons' children went to school with me in the area, and knew of me and my brother Jeff. Without the military base in my district, I would not have been able to win. Accordingly, I do not think I could win in a parishwide race, or in a white majority district elsewhere in the parish, because of voting along racial lines.

- 21. In my election in 1987, I ran as an incumbent against the same two individuals and won in the primary. In the 1991 election, I ran under the 1991 Police Jury plan, but was unopposed.
- [13] 22. I was on the Police Jury in 1991 when the Jury redistricted. I attended most of the meetings at which redistricting was discussed. I was angered at the beginning of the redistricting process. I was assured that they would make a special effort to include minority input, but at first I was excluded from the Reapportionment Committee, and was only included after I publicly complained of being shut out of the process. I was the only Police Juror to have attended the reapportionment seminar that had previously been held in Monroe, Louisiana—the same seminar that Gary Joiner had attended—so my initial exclusion from the Committee was particularly surprising.
- 23. Even after they put me on the Committee, I really didn't have much to do with how the lines got drawn. Other parish officials were more directly involved. These included Parish Administrator James Ramsey, and Jurors Pete Glorioso, Mark Montgomery, Bob Burford, Tommy Scarborough, Mark Montgomery,

and Wayne Hammack. Glorioso in particular is a major player. He is directly involved in all important issues. He has for years been Bossier City's Director of Public Works, which gives him great political contacts and political clout. The Jury hired Gary Joiner as a consultant to draw the plan. I met with Joiner in his office. He told me that most of the other Jurors had already met with him. By the time I met with him, he had already drawn up the plan. He showed me what my district would look like under his plan. He told me that this was the best possible district he could draw for me. He told me that Tommy Scarborough's district [14] and Pete Glorioso's district could elect blacks ten years from now, so there was a potential for having three blacks on the Police Jury in the future. He also told me that it was impossible to draw a black-majority district because the black population was too scattered, and that any plan he drew would be rejected by the Department of Justice. I don't remember ever hearing any discussion that drawing black districts would create too many precincts.

24. I voted for the 1991 Police Jury plan because I was led to believe by Mr. Joiner and the other Police Jurors that it was impossible to create a black-majority district that would be precleared by the Department of Justice. That was my understanding at the time of the 1990-1991 redistricting process, and also while the Department of Justice was reviewing the Police Jury plan. After this lawsuit started, during the summer of 1994, I was shown maps of the alternative redistricting plans called the "NAACP Plan" and the "Cooper plan." From these maps I realize that it is possible to draw two reasonably compact black-majority districts. Once I was shown that, I changed my mind. I now believe

that I was deliberately misled in this regard during the 1990-1991 redistricting process. If I had known then what I know now, I would have voted against the Police Jury plan. Based on my knowledge of the Police Jury, the racial politics of Bossier Parish, my involvement in the redistricting process at the time, and the way in which I was misled, I believe the Police Jury adopted the plan it did because it wanted to avoid drawing [15] any districts with a black majority. Drawing a black majority district was never considered at all, and the Jurors never had the slightest intention of trying to do anything to do right by blacks. All the Police Jurors cared about was protecting their own districts—incumbency drove everything.

25. The School Board members generally took an interest in the Police Jury's redistricting, because the School Board might end up with the same or a similar plan. In fact, in 1990 the School Board approached the Police Jury about doing a joint redistricting, but the Police Jury said no. I remember James Ramsey, then the Parish Administrator, telling the Jury that he and School Superintendent Lewis had been in contact on this idea. The Police Jurors who really made the decisions, like Pete Glorioso and Bob Burford, had contact with the School Board. Glorioso has been around so long, has so much clout and connections, that the School Board would naturally consult with him, directly or through mutual acquaintances, as part of the normal give-and-take of the Bossier Parish politics. Burford has extensive connections to the School Board. He has been an employee of the School Board for about 30 years as a teacher, and more recently as a professor for a college run by the School Board. He has gone to the School Board on a number of occasions to represent the Police Jury. Burford is also close friends with School Board members. His close friend, David Harvey, who for years has lived 5 houses away from Burford, was President of the School Board around this time. Based on my knowledge and [16] experience in Bossier Parish politics, I would say that Bossier Parish School Board members would have been aware of the Police Jury's redistricting process, the decision it finally reached, and the reasons for that decision.

26. I was misled in one other way as well. I have discovered that the district I'm in under the 1991 Police Jury plan is not as good for me as I was told. I do not believe that I can win in my current district. When they drew the new plan, they put in more whites from a conservative area. I was told by Joiner at the time that these were people I could do well with as far as getting their support. I now think they probably will not support me. The 1991 [sic] election for Bossier City Council suggests this, because the voters in that area did not vote for my brother, who lost his reelection effort. They also put in a black area in my district, and I was told by Joiner that this was helpful to me as well, but I have since discovered that this is a poor area and the black residents there are largely unregistered. At the time, Joiner told me that he had to make the particular changes he made or it would not pass Justice, because my district had declined in black population since the last redistricting. Even though the changes to my district may have involved moving some blacks in, it still hurts me, not helps me, because the blacks they moved in vote at lower rates than the whites they have moved in.

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# Excerpts from Government Exhibit 106 (Direct Testimony of S.P. Davis)

[submitted on Mar. 1, 1995]

[1]

. . . . .

- 1. I reside at 2129 North Cross Drive, Shreveport, Louisiana 71107. I have lived at this address for four years. I am an attorney and have practiced law for 20 years. I am currently the sole owner of the Davis Law Office, 4050 Linwood Avenue, Shreveport, Louisiana. I graduated from Southern University Law School in Baton Rouge, Louisiana. I also hold the rank of Lt. Colonel in the Army Reserves. I am the Battalion Commander of an Infantry Battalion stationed in Bossier City, Louisiana. I am married and have three children. My wife is an elementary teacher at the T.L. Rhodes Elementary School in the Bossier Parish School District. My oldest son is 24 years old and attended schools in the Bossier Parish School System for 12 [2] years. My daughter is 14 years old and attended Princeton Middle School in the Bossier Parish School System. She currently attends Bird High School in Caddo Parish. My youngest son is in the 5th grade at Platt Elementary School in the Bossier Parish School System.
- 2. I was raised in Bolinger, Louisiana, a small community located north of Plain Dealing in Bossier Parish, Louisiana. I attended the segregated school system in Bossier Parish. I graduated from the all-black Carrie Martin High School, which is now an elementary school. I still have family in Bossier Parish.

3. I am the attorney of record for the plaintiffintervenors, the Bossier Citizenship Education Program, Inc. ("BCEP") in Lemon v. Bossier Parish School Board, C.A. No. 10,687 (W.D. La.) and have represented the BCEP since they sought intervenor status on February 12, 1976, which was granted on March 2, 1976.1 The Lemon case was originally commenced on December 2, 1964, when black plaintiffs brought suit under 42 U.S.C. 1983 to desegregate the public schools of Bossier Parish. The school board was subsequently found liable for intentionally segregating the public schools in Bossier Parish in violation of the Fourteenth Amendment to the United States Constitution. Lemon v. Bossier Parish School Board, 240 F. Supp. 709 (W.D. La. 1965). From 1965-70, the parties were engaged in protracted litigation in which the Bossier Parish School Board strongly [3] resisted the desegregation of its schools, advancing one inadequate remedial plan after another, including three plans that were rejected by the Fifth Circuit Court of Appeals. On January 20, 1970, the current desegregation plan was approved by the Lemon court. The school district has never been declared unitary and that decree, with some modifications over the years, remains in effect today.

[11]

. . . . .

<sup>&</sup>lt;sup>1</sup> The United States was granted intervenor status as a plaintiff on April 3, 1965.

22. The low number of black administrators, principals, and teachers in the school district and the fact that the school board has systematically shut out the black community from the policy and decision making aspects of the school system have adversely affected the black students in the Bossier Parish schools. These factors combine to create an atmosphere of racial hostility in the schools and result in black students having higher drop-outs rates because they do not receive the same encouragement to excel as the white students. This is particularly true in the schools with student populations that are more than 80 percent white with corresponding faculties that are more than 80 percent white. Black students have higher suspension and expulsion rates than the white students in these schools. Black students are also less involved in extracurricular activities, such as cheerleading and dancelines, where the selection for these activities is done by the white [12] teachers. Years of having predominantly, if not exclusively, white squads in these activities has lowered the spirit and self-esteem of the black students, who no longer feel it is even worthcompeting because they will not be selected based solely on their race. A recent example at Haughton High School demonstrates that the school board's faculty hiring practices and attitude toward black students have perpetuated an atmosphere of racial hostility in the schools and in the community. In January, 1993, black students at Haughton High School protested the election by the student body of an allwhite Winter Court, an event that takes place during basketball season. After the students' protest, the school administration took steps to include black students on the court. This effort fueled the long-standing racial tensions in the school and community.

Threats of violence resulted in the school administration cancelling the Winter Court events.

[16]

[additional material below submitted in supplemental testimony on Apr. 9, 1995]

30. As I said earlier, I was raised in the Plain Dealing area of Bossier Parish and remain in touch with this area through familial and professional ties. It is my understanding from counsel for the United States that the school board has asserted in the instant case that a community of interest does not exist among the black people who would reside in an election district that would include the areas of Plain Dealing, Benton and Princeton. I disagree with that assertion. While the black communities in these areas reside in different towns, they are united in their quest for an end to racial discrimination in Bossier Parish. That unity is clearly demonstrated in their continued struggle against the school board to eliminate, to the extent practicable, the vestiges of racial segregation. The opportunity to elect members to the school board who would [17] represent their views would certainly enhance the possibility that one day the children in the Bossier Parish Schools will be able to exercise their constitutional right to attend a system of schools that is unitary.

31. I personally know only one of the Bossier Parish School Board members, Mr. Henry Burns. I know Mr. Burns because we serve together in the Army Reserves. I have spoken with Mr. Burns on several occasions regarding school board matters that concern black students and the black community. Mr. Burns told me that while he personally favors having black representation on the board, other school board members oppose that idea. Nevertheless, to my knowledge, Mr. Burns has never taken a public stand on this issue. Mr. Burns and I have also discussed other issues such as black teacher recruitment and hiring, and the lack of opportunity for black students to participate in extracurricular activities sponsored by the school district.

\* \* \* \* \*

Excerpts from Government Exhibit 108 (Direct Testimony of former Bossier Parish Police Juror Johnny Gipson dated December 8, 1994)

[1]

\* \* \* \* \*

- 2. I have always had an interest in civic affairs and have been involved in the local politics of Bossier Parish since at least 1979. One of the reasons for my involvement in local politics is that I believe that the all-white governing bodies of [2] Bossier Parish have long neglected the needs and concerns of the black community in such areas as employment and education. I have been a member of the Bossier Parish chapter of the NAACP for three or four years.
- 3. I first ran for political office in early 1979 when I ran for the city council of Bossier City from District 2. I lost that election by 15 votes to Anthony Provenza, a white candidate. I have been told by counsel for the Department of Justice that, according to the Department's records, the district was 34 percent black in total population as of the 1980 Census. I believe that I lost that election because blacks did not constitute a majority of the district.
- 4. Later in 1979, I ran for the Bossier Parish Police Jury from District 10 against Thomas McDaniel, the white incumbent. I won that election by 86 votes. I was the first black ever elected to the police jury. I felt I had a chance of winning in this district, despite the fact that blacks did not constitute a majority of the population, in part because the Barksdale Air Force

Base and the residential area around it was located in the district. Most of the residents of the base did not vote in Bossier Parish elections, thus increasing the black percentage of the voters in the district. I also knew that I would need to garner some white votes. and I enlisted the aid of a few of my white friends, particularly David Broussard, who was active in the Jaycees. Mr. Broussard was not a native of Bossier Parish, having moved to Bossier Parish from Texas. Mr. Broussard [3] actively campaigned for me on a theme that it was time for black representation in Bossier Parish and was influential in my ability to garner some white votes, particularly among the retired military population or civilians employed at the base who lived in the district. These people who were not originally from Bossier Parish and had experience working with blacks as peers on the base. I felt that, unlike the lifetime white residents of Bossier Parish. these people were more likely to look beyond race and at the fact that I was more educated and capable of representing them than my white opponent, Thomas McDaniel. I do not believe that I would have won this election if not for these special circumstances because it is well known that white lifetime residents of Bossier Parish in general would not then and will not now vote for black candidates, based purely on the color of their skin.

\* \* \* \* \*

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-01495 (LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF,

v.

JANET RENO, PLAINTIFF,

v.

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

DECLARATION OF DR. GEORGE CASTILLE

### LIST OF FIGURES

[Figures omitted from J.A. See U.S. Exh. 103 for originals]

- Figure 1 Map of Bossier Parish showing major roads and municipalities
- Figure 2-A Map of 1992 Bossier Parish School Board Redistricting Plan showing district lines over black concentrations by Census block
- Figure 2-B Map of 1992 Bossier Parish School Board Redistricting Plan (close-up view of Bossier City), showing district lines and major roads over black concentrations by Census block
- Figure 3 Map of 1992 irregular Bossier City corporate limit/1992 School Board district boundary along Hwy 71, showing odd-shaped district boundaries caused by following corporate limits
- Figure 4 Map of 1992 School Board districts in Benton area showing separation of black urban developments outside the corporate limits from black neighborhoods within the corporate limits
- Figure 5 Map of Plain Dealing showing urban development outside the corporate limits as of 1988 (base map 1981)

- Figure 6 Map of 1992 School Board districts in part of Bossier City, showing separation of black Shaver Street neighborhood from adjacent black neighborhood.
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- Figure 9 Map of 1992 School Board districts in part of Bossier City, showing separation of black Lamar Street neighborhood from adjacent black neighborhood.

#### I. INTRODUCTION

# A. Qualifications and Experience

- 1. My name is George J. Castille, III, and I make this declaration pursuant to 28 U.S.C. 1746.
- 2. I received my Ph.D. in Geography at Louisiana State University in 1993. I teach Louisiana Geography at LSU and work full time as an independent consultant. Other teaching experience includes a course entitled "Old New Orleans and the Cajun Country" which was offered for continuing education credit for teachers, and I have also taught several introductory Geography and Anthropology courses. Over the past 10 years I have worked on about 12 to 15 projects involving disputes over boundaries or property ownership in south Louisiana. I gave expert witness depositions in two boundary dispute lawsuits, Summersgill Dardar, et al. vs. Lafourche Realty Co. Inc., (E.D. La.) and Hankamer et al. vs. Angelina Hardwood Lumber Co. et al. (14th Judicial District Court, Calcasieu Parish). The expert witness testimony included interpretation of General Land Office Records, historic maps, and historical documents related to local and regional commerce. My Ph.D. research involved the analysis of Louisiana Supreme Court decisions related to the ownership of waterbottoms. This analysis explored the implications for changes in boundaries along the land/water interface as waterbodies are modified by natural means (see attached vita).
- 3. More recently, I co authored an expert witness report for Ray Hays et al., vs. State of Louisiana, et al.

- (W.D. La.), a case challenging the congressional districting plan for Louisiana on the grounds discussed in the Supreme Court decision in *Shaw* v. *Reno*. For the *Hays* case I conducted a geographical analysis of twentieth century congressional districts in Louisiana. I compared the State's plan to prior Louisiana congressional plans and alternative plans proffered by the plaintiffs.
- 4. I have been retained by the United States to evaluate and compare the district boundaries of various Bossier Parish redistricting plans as to the extent the district boundaries follow such commonly used features as roads, streams, railroads, and corporate limits, and to analyze these plans from the perspective of such traditional redistricting principles as compactness and unifying communities of interest. I am being paid at the rate of \$50.00 per hour.

## B. Methodology and Data Collection

5. I have used available maps of Bossier Parish to compare the proposed 1992 School Board Plan, the NAACP Alternative Plan, and a second alternative plan developed by William S. Cooper, the redistricting expert employed by the defendant-intervenors in this case. Maps that were used to aid in the interpretation included Census maps, maps of prior redistricting plans in Bossier Parish, historical maps on file in the archives at the LSU Shreveport library, USGS topographic maps (scales 1:100,000, 1:62,500, and 1:24,000), maps produced by the computer-run geographic information systems (GIS maps) of both the United States and William S. Cooper, and road maps published by the

Louisiana Department of Transportation and Development.

6. I also conducted a field investigation to examine the layout of the parish in detail and to determine the physical character of the boundary lines involved. During this field investigation, all major communities were visited and various roads were traversed from the Arkansas state line down to the southern end of the parish at the mouth of Loggy Bayou. During this trip, observations were made as to the physical terrain, natural vegetation, obvious economic activities, settlement patterns, and concentrations of population. Such a field investigation is not necessary for a comparison of redistricting plans, which primarily involves the analysis of maps. In this case, however, the field investigation gave me a better picture of the specific sites on the maps which I analyzed, as well as a ground-level overview of the parish.

# II. BACKGROUND AND HISTORICAL SETTING

7. A map of Bossier Parish is provided in Figure 1. Historically, the parish has changed from being primarily agricultural in character to being driven by commerce and industry. This change has driven population and migration trends, particularly with respect to blacks. In the decades after the Civil War, some black residents left the floodplain plantations for the far less agriculturally rich hill country and terraces. Those who remained on the floodplain plantation worked as sharecroppers, and the sharecropper system survived until the middle of the twentieth century. By the 1960s, most blacks had abandoned the floodplain plantations and had become concentrated in urban areas and the hill region. The limited economic

potential of tenant farming and sharecropping was one reason why many blacks moved to the parish's cities and why others left the parish for the Northern states. This migration to the north and to urban areas began immediately after the Civil War and peaked during the 1930s and 1940s, accelerated by the Great Depression. (U.S. Census various years, Aiken 1978, Prunty 1955, Lewis 1987). The black out-migration from Bossier Parish continued through at least 1970, substantially reducing the black percentage within the parish. Specifically, the parishwide black percentage dropped from roughly 70% in 1890 to the roughly 20% level seen in 1990.

8. With the recent urban growth associated with the Shreveport-Bossier City metropolitan area, Bossier Parish is becoming increasingly urban in character. The present trend appears to be a continuation of the movement of African Americans from both the floodplain and hill regions to urban areas within Bossier Parish. Bossier City contains the largest concentration of African Americans; over half of the parish's black population lives in Bossier City. The black population within Bossier City is largely concentrated in only a few sections of the city, and the numbers are small compared to the city's white population. The black percentages are higher in the towns of Plain Dealing and Benton. Outside of urban areas, the greatest concentration of African American population in Bossier Parish now is still found in those hill and terrace regions, where soils provide the least agricultural (and therefore economic) potential.

# III. COMPARING THE PROPOSED PLAN AND TWO ALTERNATIVES

#### A. Overview

9. The 1992 School Board Plan uses roads, streams, railroads, and corporate limits as boundary features. The plan relies heavily on roads and corporate limits, which in some cases causes splits of communities of interest-including, in several cases, black communities. The NAACP Plan avoids this fragmentation of communities by relying less on roads and corporate limits as boundaries, and more on streams. Overall, however, in terms of the use of logical, traditional boundary markers, the NAACP Plan is not significantly different from the 1992 School Board Plan. Many of the curves in the rural, northern-parish minority district in the NAACP Plan are due to the use of natural boundaries such as streams. The Cooper Plan is similar to the NAACP Plan, except that the northern-parish minority district is more compact. Both plans demonstrate that two reasonably compact black-majority districts can be drawn in Bossier Parish for the Bossier Parish School Board. From the standpoint of adherence to traditional redistricting principles, the two alternative plans are no worse, and in some respects better, than the proposed plan.

## **B.** Defining Boundaries

10. Boundaries associated with early settlement often correlated with physical features such as streams, lakes and ridges. However, the trend in post-colonial United States has been that of assigning boundaries based on artificial or man-made phenomena such as

orientations of the compass, straight lines drawn between two landmarks, or roads.

- 11. As with other parishes, Bossier Parish has been subdivided into election districts that correspond to voting areas for Police Jury members, School Board members, or for other elected offices. Generally the district boundaries follow four common features: streams, roads, railroads and corporate limits. In cases where no physical or man-made feature exists, boundaries sometimes follow arbitrary lines that are related to property boundaries.
- 12. While common, the use of corporate limit lines as district boundaries can be problematic. Corporate lines are frequently drawn in an arbitrary manner. The arbitrariness can stem from an extension of corporate limits well beyond the area of present occupation in an effort to provide room for urban growth. Corporate lines are also a problem when they are not revised, or are revised only infrequently, to accommodate urban growth outside the corporate limits. Either boundary phenomenon can result in the splitting of communities of interest.

# C. The proposed 1992 Bossier Parish School Board Plan

13. As with previous districting plans, the 1992 Bossier Parish School Board Plan (Figures 2-A, 2-B) follows common boundary delimitation practices. District outlines follow typical boundary markers for parish subdivisions. As noted above, the more common district delimiters are roads, streams, railroads, and corporate limit lines. Several more unusual district

boundaries include the limits of Barksdale Air Force Base and a division line that runs through the middle of the Air Force base.

- 14. A few other boundary anomalies were also observed. One example is the unusually shaped boundary along Highway 71 in south Bossier City (Figure 3, blue shading), where a long finger of land from District 12 extends into District 1, ending in a triangular head (Figure 3, Location A). This projection follows an odd-shaped corporate boundary for Bossier City (Figure 3, yellow shading). The Highway 71 anomaly may reflect both an attempt to exclude a stockyard (Figure 3, Location C) from the corporate limits while expanding the limits to include a new subdivision and trailer park (Figure 3, Location B).
- 15. In another instance, the Benton corporate limits serve as a district boundary, but this particular boundary fragments neighborhoods with economic and racial commonalities. The community of Benton has expanded outside the corporate limits in several areas. and until the corporate limits are revised to include those areas of expansion, the corporate limits will continue to fragment those black neighborhoods that straddle the corporate line. By following the corporate limits, the School Board Plan's district boundary reinforces the fragmentation of some black neighborhoods, splitting them between Districts 3 and 4. One cluster of black families lives along Shaffers Road along the east side of Benton (Figure 4, Location A), and the large black subdivision of East Benton lies along Highway 162 just north of the Benton Community Club Cemetery (Figure 4, Location B). Another group of black residents is located immediately north of Benton

corporate limits at the end of Second Street (Figure 4, Location C). The case of Benton illustrates how strict adherence to the legal corporate limits can exclude neighborhoods from the voting area of the social and cultural community as a whole–in this case, the black community. The NAACP and Cooper Plans avoid this fragmentation.<sup>1</sup>

16. As in Benton, the district boundary lines within Bossier City have effectively divided well-established neighborhoods that are predominantly black. For example, the area bounded by Shaver, Beckett, Fuller and McArthur Streets (Figure 6, green shading) is included within District 8 when it easily could have been placed within District 7, located immediately to the west. Culturally, this black neighborhood is more likely tied to the black residential area immediately to

While not directly related to the boundaries in the 1992 School Board Plan, the corporate limits of Plain Dealing, as they existed during the 1970s and 1980s, provide another recent example of a Bossier Parish community in which relatively large, predominantly black subdivisions lie immediately outside of the official limits of a community. In the case of Plain Dealing, the corporate limits were extended 1/2 mile to the southwest along a rural highway to incorporate a single white residence (Figure 5, Location A). (That extension was deannexed in recent years, at the request of the sole white resident included.) If the corporate limits were extended less than 1/2 mile to the west, then the official community could incorporate DeMoss Hill subdivision, a predominantly black neighborhood of over 50 homes and two churches (Figure 5, Location B). Another even larger black subdivision, known as Carstarphen Heights, is located immediately south of the corporate limit (Figure 5, Location C). Of course, none of the redistricting plans which I examined have boundaries which follow the Plain Dealing corporate limits; Figure 5 merely illustrates another example of "underbounding" within Bossier Parish.

the west (Figure 6, Location D) than to the heavy commercial strip (Figure 6, pink shading) located along the four-lane Highway 3 (Benton Road) immediately to the east. By setting the boundary along the railroad, the School Board Plan has cut off this neighborhood from the larger community, thus separating approximately 35 houses. Under the School Board's Plan, then, a railroad serves as the arbitrary boundary between two districts, splitting a black community. A nearby road could just as easily have been selected as the boundary, and the larger neighborhood could have remained intact. This is a clear example where a black neighborhood is fragmented by district boundaries. This fragmentation is avoided in the NAACP and Cooper Plans.

### C. The NAACP Alternative Plan

- 17. The NAACP Plan was generated from the 1990 Census database (1992 TIGER/Line Files) using a redistricting computer. The minimum unit of measure was the Census block. Census block boundaries, as designed by the Census Bureau, correspond to visible natural or man-made features.
- 18. The NAACP plan demonstrates that two reasonably compact districts could be drawn which encompass the significant black population concentrations that exist in Bossier Parish, one is Bossier City (Figure 7-B) and one in the northern central, more rural region of the parish (Figure 7-A). This results in two majority-black districts. District 2 begins in the extreme north-western corner of the parish and follows the Red River south, extending to the community of Princeton in the north-central part of the parish (Figure 7-A). District 1

is "C"-shaped and is located entirely within the heavily urbanized portion of Bossier city (Figure 7-B).

- 19. The NAACP alternative plan creates district boundaries that are significantly different from the boundaries of the proposed 1992 School Board Plan. Nevertheless, the alternative boundaries generally follow the same types of natural and man-made features as in the School Board Plan. The boundaries of the NAACP alternative correspond primarily to existing roads and streams, and utilize streams to a greater extent that the School Board Plan. The alternative plan also utilizes railroads, existing district lines, the limits of Barksdale Air Force Base, corporate limits of various communities, an electrical high power line, several rural unimproved roads, and parish ward boundaries. All of these types of boundaries of course reflect visible local features that outline the census blocks. Overall, in the use of logical features such as roads, streams, etc., as boundary markers, the NAACP Alternative Plan is not significantly different from the proposed plan.
- 20. Stream boundary correlations were noted in at least 14 locations as opposed to 6 in the School Board Plan. While some of the districts in the alternative plan are more elongated than districts of the proposed School Board Plan, this is due to the greater use of streams as boundaries. The more extensive utilization of streams as boundaries is a positive factor. As discussed above, the use of roads in the School Board Plan has in some cases resulted in the fragmenting of communities of interest. This is not the case with the use of streams as boundaries in the alternative plan. Roads in Bossier Parish are used for transportation

today far more than streams, and thus tend to attract settlements along both sides of the road. Conversely, communities of interest straddle streams in Bossier Parish to a much lesser extent, and using streams as boundaries is less problematic.

- 21. The "fingers" or small projections along the east side of District 2 immediately southeast of Plain Dealing are simply reflections of Census block boundaries that follow stream courses (Figure 7-A, Location A). Irregular-shaped Census blocks, and therefore irregular-shaped district boundaries, are much more likely to occur in rural parishes with hilly terrain such as Bossier Parish than in relatively flat areas such as in the southwestern part of Louisiana.
- 22. Slightly irregular-shaped boundaries also occur in District 2 immediately north of Plain Dealing (Figure 7-A, Location B), within the Bodcau Wildlife Management Area in the east central part of the parish (Location C), and in the areas immediately north and east of the Black Bayou Reservoir (Locations D and E). These irregular shapes represent boundaries that follow local stream patterns and rural roads.
- 23. The NAACP alternative plan also differs from the School Board Plan in that, unlike the School Board Plan, district lines divide the corporate limits of Benton, Haughton and Plain Dealing. However, the strict adherence to corporate lines can exclude some subdivisions that are immediately outside the corporate limits but should be considered as part of the suburban core of these communities. As noted previously, examples of excluded suburban development were found through a field and map investigation of the

community of Benton (Figure 4). The NAACP and Cooper Plans avoid this division of areas with a community of interest.

- 24. Another way in which the alternative plan differs from the proposed plan is in the use of unimproved roads and a powerline as boundaries. While not evident on some parish maps, such features are easily recognizable on USGS topographic quadrangle maps and are of course readily identifiable to people living in the vicinity.
- 25. The NAACP plan demonstrates that Census blocks can be grouped in such a way that predominantly black districts are created. To create such districts it may be necessary to disregard some of the established official boundaries, such as corporate limits, particularly if those boundaries do not reflect cultural changes that are visible geographically. In the use of logical features such as roads, streams, etc., as boundary markers, the NAACP's Alternative is not significantly different from the proposed plan. It contrasts with the School Board Plan in that it emphasizes the cultural or social element (ie. where people actually live) rather than the strict adherence to arbitrary boundaries that in many ways are not reflective of the cultural conditions that exist today. It is important to realize that boundaries are not only a means of defining an area; boundaries are also a means of exclusion from an area

# D. The Cooper Alternative District 8

26. The final district plan examined in this study is one prepared by William Cooper (Figure 8). The Cooper plan creates a northern parish district that is at

least 55 percent black in voting age population. The general shape and location of District 8 of the Cooper plan is similar to District 2 of the NAACP alternative, but District 8 in the Cooper plan is a little shorter and more compact. With the exception of seven boundary segments, the delimitation of District 8 matches boundary features discussed in either the School Board Plan or the NAACP plan. These seven new boundary segments include roads, streams, and an unimproved road. All of these of course, follow boundaries of Census blocks. As compared to the two previous plans, the types of features making up the Cooper plan boundaries are more similar to those found in the School Board Plan because it emphasizes roads to a much greater extent than streams.

27. The Cooper district is similar to the NAACP plan's District 2 in that both divide the corporate limits of the communities of Plain Dealing and Benton. But as noted in the School Board Plan discussion, in communities where an exclusionary settlement pattern occurs, the official corporate limits are not a fair representation of the community as a whole, and the exclusionary nature of this type of boundary invalidates the logic of strict adherence to corporate limit lines as a means of delimiting districts. Again, a boundary is created to serve the culture that creates it, not the other way around.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ GEORGE J. CASTILLE, III GEORGE J. CASTILLE, III April 4, 1995

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GEORGE PRICE, ET AL., DEFENDANT-INTERVENTORS

## DECLARATION OF DR. RICHARD L. ENGSTROM

Pursuant to 28 U.S.C. Section 1746, I, Richard L. Engstrom, make the following declaration.

- 1. I am currently research Professor of Political Science at the University of New Orleans, in New Orleans, Louisiana, and Chairperson of the Representation and Electoral Systems Division of the American Political Science Association. A copy of my current curriculum vitae is attached to this declaration as Appendix A.
- 2. I have done extensive research into the relationship between election systems and the ability of minority voters to participate fully in the political

process and to elect candidates of their choice. The results of my research have been published in the American Political Science Review, Journal of Politics, Western Political Quarterly, Legislative Studies Quarterly, Social Science Quarterly, Journal of Law and Politics, Electoral Studies, and other journals and books. Three articles authored or co-authored by me were cited with approval in Thornburg v. Gingles, 478 U.S. 30, 53 n.20, 55, 71 (1986), the Supreme Court decision interpreting amended section 2 of the Voting Rights Act. I have also testified as an expert witness in over 30 voting rights cases in federal courts across the United States.

- 3. I have been requested by attorneys for the Department of Justice to examine the extent to which voting in recent elections involving a choice between or among African American and white candidates in Bossier Parish has been "racially polarized," as that concept has been defined by the United States Supreme Court in *Thornburg* v. *Gingles*. According to the Supreme Court, voting is racially polarized when there is "a consistent relationship between (the) race of the voter and the way in which the voter votes" or expressed more simply, when "black voters and white voters vote differently" (at 53 n.21). I am being compensated at a rate of \$800 per day for my work on this case.
- 4. Elections involving an interracial choice of candidates have been analyzed because such elections are considered to be the most probative of racially polarized voting. Elections presenting voters with a choice between or among African American and white candidates were the only elections referenced by the

Supreme Court in *Thornburg* (see the review of the evidence at 52 and 58-61, and Appendix A at 80). The Fifth Circuit has ruled in *Citizens for a Better Gretna* v. *City of Gretna*, a Louisiana case, that "implicit in the Gingles holding is the notion that black preference is determined from elections which offer the choice of a black candidate." 834 F.2d 496, 503 (1987).

- 5. As a general matter, the most relevant interracial elections to analyze are recent elections for the office at issue, but when only a few minority candidates have contested elections for that office, it is appropriate to analyze the voting in interracial elections to other offices as well [see Westwego Citizens for a Better Gov't v. City of Westwego, 872 F.2d. 1201, 1208-1209 n.9 (5th Cir. 1989)]. I have analyzed therefore not only the three most recent interracial elections for seats on the Bossier Parish School Board, which were held in 1986. 1990, and 1993, but also other interracial elections. These include the only parishwide interracial election for a local office in recent years (the 1988 election for a seat on the 26th Judicial District Court) and all of the elections to local offices within the parish during the 1990s that involved an interracial choice of candidates.
- 6. Voters across all of Bossier Parish have been presented with a choice between or among African American and white candidates for local offices on only one occasion in recent years. That occurred in the 1998 primary election for a seat on the 26th Judicial District Court. In order to determine the extent to which voting in this election was divided along racial lines, I have performed a bivariate ecological regression analysis and a homogeneous precinct (or extreme case) analysis of this election. These are the standard methodologies,

approved by the Supreme Court in *Thornburg*, for assessing racial divisions in voting through precinct-level election returns (at 52-53).

- 7. Homogeneous precinct analysis focuses on precincts in which the voters are predominantly of one race or the other. The votes cast in these precincts provide the basis for estimates, under this methodology, of the level of support that each of the respective groups has provided a particular candidate. In the 1988 primary election, over 90 percent of the people signing in to vote was white in 25 of the 43 precincts in Bossier Parish. These precincts are identified therefore as homogeneously white. The African American candidate for the seat on the 26th Judicial District Court in this election, Bobby Stromile, was not the choice of the voters in these homogeneous white precincts. Stromile received 31.1 percent of the votes cast in this election in these 25 precincts, compared to 69.9 percent for his white opponent. The highest percentage of African Americans among those signing in to vote in any of the precincts was 75.1, so none of the precincts can be considered homogeneously African American and no extreme case estimates of the African American support for Stromile can be derived from this analytic technique.
- 8. Estimates of the support for Stromile among both African Americans and whites can be derived through regression analysis, however. This procedure relies on the votes cast in all of the precincts, not just those that are cast in racially homogenous precincts. Regression analysis is based on a systematic comparison of the votes cast for the various candidates in each of the precincts and the relative presence of African Ameri-

cans among those signing in to vote in each precinct. There is a very consistent relationship between the percentage of those signing in to vote that was African American in each precinct and the percentage of the votes received by Stromile in the precincts. relationship can be summarized by a correlation coefficient, which has a value of 1.0 when the relationship is perfectly consistent. The value of the correlation coefficient for the relationship between Stromile's vote and the racial composition of the precinct is .842, which is statistically significant at .0001 (in other words, the probability of a relationship of at least this magnitude occurring by chance is less than 1 in 10,000). estimate of Stromile's support among the African Americans voting in this election, derived through regression analysis, is 79.2 percent. The regression-based estimate for his support among the whites voting in this election is 28.9 percent.

- 9. In addition to this latest parish-wide election, I have examined the votes cast in the last three elections for seats on the school board in Bossier Parrih in which the voters in the respective district had a choice between African American and white candidates. The most recent of these elections was in 1993. The other two occurred in 1990 and 1986.
- 10. The 1993 election was a special election for the District K seat on the parish school board. The African American candidate in this election, Jerome Blunt, had been appointed to this seat in 1992. He sought election to the seat the following year, along with one white candidate. District K is a homogeneously white district. At the time of this election, 92.0 percent of the registered voters in this district was white. On election

day, 97.4 percent of those signing in to vote was white. Blunt was obviously not the choice of the white voters in this election. Blunt lost his seat on the school board to his white opponent, receiving only 23.9 percent of the votes cast. Even if every vote Blunt received had been cast by a white voter, and every African American who signed in to vote had cast a ballot for Blunt's opponent, Blunt would still have received only 24.5 percent of the white votes in this election. Which candidate was in fact the choice of the few African American voters in this election cannot be determined through these precinct-level data.

- 11. The 1990 and 1986 interracial school board contests were both held in District J. The African American candidate in 1990 was Johnny Gipson, who competed with one white candidate for the position. In 1986 the African American candidate was Jeff Darby, who also competed for the position with one white candidate. Both of these candidates lost the election in this majority white district.
- 12. District J consisted of two precincts that have been described in this case's Joint Statement of Material Facts and Conclusions of Law About Which There Is No Dispute as "distinctive" and "unique" precincts in Bossier Parish (paragraphs 161 and 162). These were precincts 2-15 and 2-16, which included Barksdale Air Force Base and areas adjacent to the base. Many of the white voters in this area are military retirees who are not from Louisiana, let alone from Bossier Parish, and who therefore "tend on average to vote in a less polarized way" than other whites in the parish (paragraphs 162 and 163).

- 13. At the time of these elections, precinct 2-16 was homogeneously white and precinct 2-15 was racially mixed. In precinct 2-16, 97.4 percent of those signing in to vote in 1990 was white, and 99.2 percent of those registered to vote in 1986 was white. (Sign-in information is not available for elections prior to 1988). In both of these elections, this precinct supported the white candidate. Gipson received 31.8 percent of the votes cast in this precinct in 1990, and Darby received 26.6 percent in 1986. In contrast, Gipson and Darby both won precinct 2-15 in these elections. African Americans constituted 48.9 percent of those signing in to vote in 2-15 in 1990, and 48.9 percent of those registered to vote in 1986. Gipson received 73.5 percent of the votes cast in that precinct in 1990, and Darby received 75.9 percent of the votes cast in 1986. While the data for these two precincts do not provide a sufficient basis for deriving specific point estimates of the support of the different groups for Gipson and Darby, the contrast in candidate support between the two precincts certainly suggests that these African American candidates were the choice of the African American voters in these elections, but not the choice of the white voters.
- 14. In addition to the analyses reported above, I have also examined the vote in the six other elections in the parish during the 1990s in which voters were presented with a [sic] interracial choice of candidates. These elections occurred in different places around the parish. They include the elections for the District 1 and District 2 seats on the Bossier City Council in 1993, an election for the Haughton Board of Alderman [sic] and an election for Mayor in Benton in 1992, and a parish Police Jury election for District 7 and a mayoral election in Haughton in 1991. In all of these elections, a

majority of those signing in to vote was white, and in all of these elections the African American candidates were defeated, including the two African Americans who were incumbents at the time.

- 15. In the Bossier City Council elections in 1993, Will Jones was the African American candidate in District 1 and Jeff Darby was the African American candidate in District 2. Jones had two white opponents, while Darby, an incumbent, had one white opponent.
- 16. Voters in five precincts, all of which were homogeneously white, participated in the District 1 election in Bossier City. The percentage of people signing in to vote in this district that was African American was 4.9. The African American candidate in this election, Jones, was not the choice of white voters, having received only 10.1 percent of the votes cast in this election.
- 17. The other Bossier City councilmanic election occurred in District 2. Precinct election returns and sign-in data indicate that in this election the African American voters preferred Mr. Darby while the white voters preferred his white opponent. Mr. Darby's vote exceeded his opponent's vote in the only two precincts in which a majority of those signing in to vote was black. He received 66.2 percent of the votes cast in precinct 2-8, in which 72.0 percent of those signing in to vote was black, and 57.5 percent of these signing in to vote was black, and 57.5 percent of those signing in to vote was black. The only other precinct that Darby won was his home precinct, 2-16, a homogeneously white precinct in the Barksdale Air Force Base area in which he received 52.7 percent of the votes cast. Darby

lost the other four precincts, three of which were homogeneously white. He received 36.7 percent of the votes cast in these precincts, and 46.7 percent in the district overall.

- 18. Darby's overall support among the African Americans voting in this election is estimated, through regression analysis, to be 61.0 percent, while his vote among the white voters is estimated to be 41.3 percent. The correlation coefficient for the relationship between the percentage of the votes received by Darby and the racial composition of the precincts is .569. This coefficient, based on only seven precincts, is not statistically significant. In the homogenous white precincts Darby received 45.7 percent of the votes cast.
- 19. In October of 1992, Cashie Cole, an African American incumbent on the Haughton Board of Aldermen, lost his bid for reelection. This was an at-large election in which five seats were to be filled and each voter had five votes to cast. All of the votes cast in the Haughton election were cast in one precinct, so no estimates of the racial division in the vote can be provided. African Americans constituted a minority, 25.6 percent, of the people signing in to vote in this precinct, however, and Mr. Cole finished sixth among seven candidates, with 13.9 percent of the votes cast.
- 20. Another interracial election in 1992 was a mayoral contest in the Town of Benton. Votes in this election were also cast in a single precinct, so again no estimates of the racial breakdown in the vote can be provided. African Americans constituted 38.3 percent of the people signing in to vote in this precinct, and the

African American candidate, Thelma Harry, received 36.2 percent of the votes cast.

- 21. In October of 1991, African American candidates competed with white candidates for the District 7 seat on the parish Police Jury, and for the mayoralty in Haughton. District 7 for the Police Jury consisted of five precincts. Precinct election returns indicate that the African American candidate in that contest, Leonard Kelly, was the choice of neither the African American voters nor the white voters. A regression analysis of the five precincts in this election produces an estimated vote for Kelly among African Americans of 41.5 percent, and among whites of 33.8 percent. The correlation coefficient for the relationship between the percentage of the votes received by Kelly and the racial composition of the precincts is .270. This coefficient is not statistically significant. Only two precincts were racially homogeneous; both were white precincts in which Kelly received 38.3 percent of the votes. (The only other African American candidate for a seat on the Police Jury in 1991 was Jerome Darby, an incumbent seeking reelection in District 10. There was no election in this district, however, as Mr. Darby was unopposed.)
- 22. The other election in 1991, that for the mayoralty in Haughton, was held in one precinct, so once again no racial breakdown of the vote can be estimated. African Americans constituted 25.4 percent of those signing in to vote in this precinct, and the African American candidate in this contest, Mark Hill, finished last among three candidates, with 10.8 percent of the votes.
- 23. In summary, the only parishwide election in recent years in which the voters in Bossier Parish had a

choice between an African American and a white candidate for a local office, the 1988 election for a seat on the 26th Judicial District Court, resulted in the voters being clearly divided along racial lines. Had only the votes of the African American voters been counted in that election, Bobby Stromile, the African American candidate, would have won that election. Stromile, however, was vetoed by the white voters of the parish. African American voters likewise would have elected Johnny Gipson to the school board in 1990 and Jeff Darby to the school board in 1986. These candidates were also vetoed by the white voters in those elections. In all three of these elections, therefore, voting was "racially polarized." While it is impossible to determine, given the limited data, whether Jerome Blunt was the candidate of choice of the few African American voters in the District K election for the school board in 1993, it is without question that he also was not the choice of the white voters in that election.

24. All of the other African American candidates competing in interracial elections in areas throughout the parish during the 1990s also lost. Data limitations preclude a determination of who the choice of the African American voters was in all but two of these elections, the District 2 contest in Bossier City in 1993 and the District 7 Police Jury election in 1991. In the first of these elections, the African American candidate, Jeff Darby was an incumbent favored by the African American voters in the district. He was defeated, however, by the white voters. In the Police Jury contest, the African American candidate does not appear to have been favored by either racial group. While the data for the District 1 election in Bossier City in 1993 do not allow one to determine who the choice of African

American voters was, it is without question that the African American candidate, Will Jones, was not the choice of white voters. The remaining three elections were held in only a single, mostly white precinct, and in all three the African American candidates were likewise defeated.

25. Given the difference in the candidate preferences of the African American and white voters in Bossier Parish revealed in the analyses reported above, I must conclude that African American voters are likely to have a realistic opportunity to elect candidates of their choice to the Bossier Parish School Board only in districts in which they constitute a majority of the voting age population.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 8, 1994.

## /s/ RICHARD L. ENGSTROM RICHARD L. ENGSTROM

[Engstrom vita attached to U.S. Exh. 107 omitted from J.A.]

Excerpts from Appellant-Intervenors Exhibit B (Final Direct Testimony of Appellant-Intervenor George Price dated April 9, 1995)

\* \* \* \* \*

- 10. On August 24, 1992, I received, by fax transmission from the NAACP Redistricting Project, a set of computer drawn maps showing the configuration of two majority black election districts for Bossier Parish and population summaries for these two districts. These maps, and the population summary for the districts are labeled Defendant-Intervenors' Exhibit 7. One of these districts is in the northern part of the Parish and includes the concentration of black population in and around the municipalities of Plain Dealing and Benton, as well as the concentration of blacks in the community known as Princeton. This district has a black voting age population of 59%. The other district is in Bossier City and contains two areas of black population concentration, one known as Old Bossier and a second in the area near Barksdale Air Force Base where there is another substantial black population concentration. This district has black voting age population of 50.6%.
- 11. Some time in the next few days, I showed these districts to Gary Joiner and he told me that a partial plan was not an appropriate submission. I told Mr. Joiner that the NAACP did not care how the School Board constructed the other ten districts in the parish and that these two districts were only being submitted as examples to show that two majority black districts could be drawn. Despite this explanation, I was told that a submission from the NAACP would not be con-

sidered, unless we presented a plan that showed the boundaries for all of the election districts for the twelve school board seats. In addition, I was told by Mr. Joiner that it would be impossible to create a whole plan using those two majority black districts as a foundation.

- 12. I once again contacted the NAACP Redistricting Projection and told them of the response to the two districts. They indicated that they would create a whole plan based on the existing majority black districts just to show that this could be done and get it to me in time for the next meeting. On September 3, 1992, the date of the next School Board meeting, I received a fax from the Redistricting Project which contained a complete plan and population summaries for all of the districts in the plan. The fax included several different maps showing certain areas of the parish in more detail along with a cover memo. The cover memo, the maps, which were on 8 1/2 x 11 paper. and the population summary, are labeled Defendant-Intervenors' Exhibit 8. As the population summaries show, the plan had the [sic] essentially the same two majority black districts as had previously been sent and another district in which blacks might have close to a majority of the voters because of the low voter registration rates of those persons associated with Barksdale Air Force Base. This district has a 36.36% black voting age population. But when one census block that is entirely based on the Air Force Base is excluded, the remaining population has a 51.0% black voting age population.
- 13. On the evening of September 3, 1992, I was among approximately 40 other interested African-American citizens representing the NAACP, the

Concerned Citizens and the other groups in our coalition who attended the School Board meeting. I presented the full plan and supporting data to the School Board and once again asked that the Board adopt a redistricting plan that was fair to the African-American community. I told the Board, as I had told Mr. Joiner, that we were not requesting that the Board adopt the actual plan that we presented, but that they use the plan as a foundation for the creation of a fair plan. After I presented this plan, Mr. Joiner told the Board that the NAACP plan would break precinct lines [7] and could not be adopted because this would be a violation of a Louisiana law which he claimed prohibited the splitting of precincts by school boards. The Board took no action on the NAACP plan, and did not ask Mr. Joiner to explore the possibility of creating any alternative plans with majority black election districts at this meeting. Mr. Joiner did not present the School Board with any proposed maps that he had developed for their consideration at this meeting.

14. The next School Board meeting was scheduled for September 17, 1992. I explained to the Board that federal law should be considered over state law and that they could not ignore the Voting Rights Act because of their ideas about state precinct law. I told them no citizen's right to vote should be diluted by a precinct law. I strongly urged the Board to adopt a plan that had majority black districts so that we could have an opportunity for fair representation. I told them that we were prepared to take whatever legal action was necessary to protect our voting rights. The School Board sat silently through my presentation. Then they passed a motion stating that they intended to adopt the Police Jury plan as the school board election plan. They

set up a special public meeting on September 24, 1994 [sic], for public comment on the plan and indicated that they intended to take a final vote on the adoption of the plan on October 1, 1992. The Board stated that a map of the police jury plan would be put on display at the School Board offices up until the date of the final vote. The School Board said we could put the NAACP plan on display in the same area of the School Board building and I was told we would need a large size map for display. The maps that we had presented were only on 8 1/2 x 11 inch paper, as they were the ones that are attached to this testimony.

- 15. On September 18, 1992, the presidents of the six predominantly black community organizations in our coalition sent a letter to David Harvey, president of the School Board, in which we opposed use of the police jury lines, and called on the school board to "establish three school board districts that will greatly increase the possibility of minorities to be elected and represented on the Bossier Parish School Board." The organizations represented by the signatories to this letter were the NAACP, the Men's Club of Bossier, the Bossier Concerned Citizens Association, the Voters League, the Concerned Parents of Plain Dealing, and the Bossier Housing Tenant Coalition. The letter endorsed the plan submitted by the NAACP and called for its use as the "foundation to create black majority districts." That letter is attached as Defendant-Intervenors' Exhibit 9.
- 16. On Friday, September 18, I again contacted the NAACP Redistricting Project and informed them of our need for a large map and what had transpired at the September 17, 1992, meeting. They said they could

produce such a map and would do so as soon as possible. On Monday, September 21, I received a large map (about 2 1/2' X 3 1/2') from the Redistricting Project by Federal Express service. I took this to the School Board and had put it on [sic] display along with the population figures for the NAACP alternative districts.

17. On September 24, 1992, approximately 40 black citizens from various parts of the community attended the public hearing on redistricting. About 4 or 5 persons spoke against the plan on behalf of our coalition. I attended this meeting and was one of the speakers. All of these speakers spoke in favor of adoption of a plan that resembled the NAACP proposal and contained two majority black election districts. Not one person present at the public hearing spoke in favor of adoption of the Police Jury plan. The NAACP Redistricting Project had sent me a memo which I could use as the basis of my presentation to the Board. That memo is attached as Defendant-Intervenors' Exhibit 10. My presentation to the School Board covered all of the points in the memo as I basically read it to the Board. I again repeatedly emphasized that federal law should prevail over state law and that they could not ignore the Voting Rights Act over concern about precinct lines. I told them that the precinct law should not infringe on any citizen's right to vote. I told them that Joiner wasn't a lawyer and was wrong in what he told them. The School Board members listened to the comments of our representatives, with some of them occasionally stating that they couldn't do anything because of the problem with the precinct lines. The Board took no action at the hearing but just adjourned after hearing the comments from the public.

- 18. The NAACP and the other groups in the coalition were strongly opposed to the adoption of the police jury plan or any other plan that did not have at least two majority black voting age population districts as the new election plan for school board elections. Therefore, after the School Board meeting of September 17, we developed a petition opposing adoption of the police jury plan and calling for the creation "of three (3) Black Districts so Black Students and Citizens can be represented on the School Board." Along with members of the other groups in our coalition, various members of the NAACP circulated copies of this petition in all of the areas of black population concentration throughout Bossier Parish. Before the school board meeting on October 1, 1992, the NAACP submitted to the Board copies of this petition containing a total of over 525 signatures. Signatures from persons living in every area of black population concentration in the parish are found on these petitions. A copy of the petition is attached as Defendant-Intervenors' Exhibit 13.
- 19. After holding the hearing on September 24, 1992, the School Board voted to adopt the Police Jury plan as its election plan at its next meeting, which was held on October 1, 1992. I attended this meeting as did other concerned African-Americans and again we voiced our opposition to the adoption of the police jury plan and urged the Board to adopt a plan that gave the African-American community an equal opportunity to participate in the political process. The Board members listened to our comments but still adopted the Police Jury plan. Those who responded said they could do nothing because the Louisiana law that prohibited breaking precinct lines prevented them from taking any

other course of action. Shortly after the School Board adopted the Police Jury plan, I informed the NAACP Redistricting Project of what had happened. They explained the Section 5 review process and told me that they would help me in filing a comment with the Voting Section of the Department of Justice and the Redistricting Project itself would also file a comment which would include both legal arguments and technical information about the NAACP alternative districts. I monitored the progress of the School Board's preparation of their Section 5 submission, which was filed in January of 1993. Soon after this both the local NAACP and the Redistricting Project submitted their comments to the Justice Department.

20. After the Justice Department entered its objection, the NAACP repeatedly asked the School Board to change its election plan and adopt one that had two majority black districts. No such action was ever taken. The subject was not even brought up for a vote. On November 9, 1993, I went before the Police Jury and requested that they change the election districts for the parish to enable the creation of two majority black election districts and an election plan that allowed for equal participation of the African-American community. The remarks that I presented to the Police Jury were essentially the same as the text of the document attached to this testimony as Defendant-Intervenors' Exhibit 11. No response was forthcoming. The Police Jury has stated that they are not willing to change the election districts of Bossier Parish

\* \* \* \* \*

Excerpts from Appellant-Intervenors Exhibit B (Supplemental Testimony of Appellant-Intervenor George Price dated April 9, 1995)

\* \* \* \* \*

28. Sometime after the School Board had submitted its proposed redistricting plan to the Department of Justice, I had lunch with the Board president at the time, Barry Musgrove. A local minister, Reverend John Dansby joined us. I remember this meeting in particular because we ate at the University Club in downtown Shreveport, near Mr. Musgrove's office. I had been continuing to encourage the School Board publicly and some School Board members privately to consider a redistricting plan with some black majority districts. Mr. Musgrove told me at this lunch meeting that there "just was not anything he could do" to get the Board to consider such a plan. He did not mention anything about splitting precincts or about the shape of black majority districts, but explained that "the votes simply were not there." He said that, while he sympathized with the concerns of the black community. there was nothing more he could do for us on this isue because the Board was "hostile" toward the idea of a black majority district.

29. I also recall a discussion sometime in 1993 with another School Board member, Thomas Myrick. Several Board Members had met with several representatives of the black community to discuss some of our concerns about the operation of the School District. The meeting was fairly tense. After the meeting, Thelma Harry and I had a discussion with Mr. Myrick. One of the issues that had come up in the meeting was the fact that Plain

Dealing High School, a predominantly black school in Mr. Myrick's district, was the only Bossier Parish high school not to receive computers with certain dedicated revenues received by the Board. Mr. Myrick was angry and said that he was doing the best he could do. He then asked us why we wanted "his seat." He said that he had worked too hard to get that seat and that he would not stand by and "let us take his seat away from him."

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

/s/ GEORGE PRICE GEORGE PRICE

> April 9, 1995 Date

## [NAACP letterhead omitted]

March 25, 1992

Mr. W.T. Lewis Superintendent, Bossier Parish School System School Board P.O. Box 218 Benton, Louisiana 71006

Dear Superintendent Lewis:

It is my understanding that the Bossier Parish School Board is in the planning stage of reapportionment of school districts in Bossier Parish. If that is true, I would like to be included in all phases of the plan, and be place [sic] on the list to be notified whenever this issue is discussed.

I understand that in accordance with Federal rules because there are no minorities on the School Board, I would like to represent a portion of the community in this process.

I look forward to hearing from you concerning this matter in the very near future.

Respectfully yours,

/s/ GEORGE PRICE
GEORGE PRICE
President, Bossier Parish NAACP

## [NAACP letterhead omitted]

August 17, 1992

Mr. W.T. Lewis, Superintendent Bossier Parish School System School Board P.O. Box 218 Benton, Louisiana 71006

Dear Superintendent Lewis:

In a previous letter dated March 25, 1992, a request was made to you concerning the reapportionment of school districts in Bossier Parish. In that letter the Bossier Parish Branch NAACP requested to be included in the reapportionment process and to this date, August 17, 1992, we have not received a reply from your office. It is now our understanding that this process is nearly completed. We regret this. Therefore, we advise you that the Bossier Parish Branch NAACP will be in opposition to the continuation of school districts that do not fairly represent all parish citizens.

We further request that the Bossier Parish Branch NAACP be allowed to come before the Bossier Parish School Board and present our views on the issue. As you know there are no Blacks on the School Board nor has there ever been. We are very concerned about this and feel that this issue must be addressed in the reapportionment process in order to create a School

Board that represent [sic] the ethnic make-up of the Parish.

We look forward to working with you and the demographer in order to create districts that provide fair opportunity for anyone desiring to participate in the democratic process that select [sic] members for the School Board.

Because of the progress already made in this matter, we look forward to hearing from you within the next ten working business days.

Respectfully yours,

/s/ GEORGE PRICE GEORGE PRICE, PRESIDENT Bossier Parish Branch NAACP

## August 17, 1992

Mr. W.T. Lewis
Superintendant, [sic] Bossier
Parish School System
School Board
P.O. Box 218
Benton, Louisiana

Dear Superintendant [sic] Lewis:

Because of Community concern regarding the Bossier Parish School System, several organizations met on August 13, 1992, to discuss and plan methods and procedure by which we could input to you and the Board our immediate concerns that affect Blacks in the Bossier Parish School System. A consensus was reached on the following enumerated items, and we request your immediate response as to adopting the solutions that we can agree upon.

- 1. The first priority of the Bossier Parish School Board should be to appoint a Black to serve on the School Board.
- 2. Develop and maintain an early recruiting program, starting at least at the sophomore level of college, and to include lay persons from the community in this process.
- 3. Demonstrate diligence in recruiting, hiring, retaining, and promoting African Americans in the Bossier Parish School System.
- 4. Widen the available pool of potential teachers by offering alternate certification primarily to liberal arts

majors, which has been mandated by the Louisiana Legislature.

- 5. Develop a reassignment and transfer program designed to insure parity or equalization of minorities at all schools, elementary, junior high or middle, and senior high so that black children can see people from their ethnic background working as professionals.
- 6. Organize and maintain a recruitment program with Grambling State, Southern University, Xavier University, and Dillard University to increase numerically the number of blacks in the Bossier Parish School System.
- 7. Establish and maintain a tracking system on Bossier Parish graduates so as to counsel and encourage as many as possible to pursue education as a major, and to return to Bossier Parish to work and live.
- 8. Seize the opportunity to appoint a black to the vacant position in District K which will encourage and assist other minorities in participating in the Democratic process which governs our Parish School System.
- 9. Encourage the Superintendent and each school board member to become actively involved in all communities, to bring and receive information calculated to improve the Bossier Parish School System on behalf of all citizens.
- 10. To guarantee participation by every Parish citizen in the upcoming reappointment of the School Board Districts in Bossier Parish to include a conserted effort to develop Black Districts that will insure black representation on the Bossier Parish School Board. Every

effort must be taken to insure that this process is completed for the current reapportionment year 1992.

We stand ready and willing to meet with you and all Board members to plan and discuss all aspects of the aforementioned requests. We too want a good Parish School Board that is responsive to the legitimate needs and sights of black citizens and their children.

We look forward to an immediate reply to this letter. Respectfully yours,

- /s/ GEORGE PRICE GEORGE PRICE NAACP
- /s/ JAMES ABRAMS
  JAMES ABRAMS
  Voters League
- /s/ JERRY HAWKINS
  JERRY HAWKINS
  Concerned Citizens
- /s/ MARY WIGGINS
  MARY WIGGINS
  Bossier Tenant
  Coalition
- /s/ GEORGE PRICE, JERRY HAWKINS
  George Price, Jerry Hawkins
  Men's Club of Bossier

### NAACP REDISTRICTING PROJECT

#### MEMORANDUM

To: George Price, Bossier Parish NAACP

From: Samuel L. Walters, Assistant General Counsel

Ian Millett, Redistricting Analyst

Date: September 3, 1992

Re: Redistricting of Bossier Parish School Board

NAACP Proposal for Election Districts

Attached is a proposed plan for the election districts for the Bossier Parish School Board. The documents included are an overall map of the parish and several detail maps to show specific areas of the parish more clearly. Also included is a page containing population analyses of the proposed districts.

The plan we have prepared contains three districts that present a legally protectable opportunity for the minority citizens to elect the candidate of their choice. These are districts 1, 2, and 3. That districts 1 and 2 are classified as ones which would be under the protection of the Voting Rights Act should be obvious, as both contain more than 50% African American voting age population and meet other redistricting criteria such as

<sup>&</sup>lt;sup>1</sup> The NAACP Redistricting Project use [sic] the Census Department category of Non-Hispanic Black, Hispanic, and Non-Hispanic White in calculating these totals. I think that the consultant used by the parish uses the Black and White categories, so his totals will not be identical to ours. In areas such as Bossier

one-person, one-vote, contiguity, and sufficient compactness. Failure to create such districts when such can be done would constitute a violation of Section 2 of the VRA.<sup>2</sup> Given this, it is highly likely that the Justice Department, in Section 5 proceedings, would enter an objection to a plan failing to create these districts or their electoral equivalents.<sup>3</sup>

District 3 contains Barksdale Air Force Base. One census block constituting most or all of the base contains 3,327 people. It is my understanding that few of these people are registered to vote and that even fewer go out to vote. If this one census block is subtracted from the population totals for district 3, what remains is a district with 52.4% black voting age population. Therefore, this configuration creates another district that would present an opportunity for the minority citizens of Bossier Parish to elect a candidate of choice. Construction of election districts involving similar positioning of military bases has been used in other jurisdictions to create minority electable districts and obtain Justice Department preclearance.<sup>4</sup>

parish with small Hispanic populations, use of the Black category instead of the Non-Hispanic Black category will result in slightly higher black percentages for the districts.

<sup>&</sup>lt;sup>2</sup> Solomon v. Liberty County, Florida, 865 F.2d 1566, 1574 (11th Cir.), rehearing en banc granted, 873 F.2d 248 (11th Cir. 1988), district court judgment vacated, 899 F.2d 1012, later proceeding 111 S. Ct. 35 (1990).

<sup>&</sup>lt;sup>3</sup> The NAACP Redistricting Project is prepared to submit these maps, data summaries, computer files and legal memoranda to the Justice Department if appropriate districts are not adopted by the school board.

<sup>&</sup>lt;sup>4</sup> Even with the population of the base included, district 3 contains over 36% black voting age population and almost 40% black and Hispanic voting age population. In a recent case, a

The plan that we constructed for the other nine districts was done simply to comply with the request that a complete plan be submitted. The lines for the other districts are of no particular significance to us and could be changed by the School Board as they see fit as long as the changes do not dilute the level of voting strength developed by the proposed districts. If the consultant to the School Board would like a computer file with this configuration, he can contact us and specify the format he needs. We also can provide a larger map generated by a plotter.

[Attachments to memorandum omitted from J.A. See Appellant-Intervenors Exh. 8 for originals]

federal court found a violation for the failure to establish a 36% black population legislative district in Ohio when an analysis of local election factors showed the minority community would have a fair chance to elect its candidate of choice from the district. Armour v. State of Ohio, 775 F. Supp. 1044 (N.D. Ohio 1991) (three-judge court). It seems clear that we have shown that here with the analysis related to the base population.

September 18, 1992

Mr. David Harvey President, Bossier Parish School Board P.O. Box 2000 Benton, Louisiana 71006-2000

In Turn: Mr. W. T. Lewis

Superintendent, Bossier Parish Schools

P.O. Box 2000

Benton, Louisiana 71006-2000

Dear Mr. Harvey:

We, Citizens of Bossier Parish, requested that you as our elected officials, develop and establish three black school board districts that will greatly increase the possibility of minorities to be elected and represented on the Bossier Parish School Board. We believe that any plan that does not provide for fair and true democratic representation for all citizens should not be approved by this board.

We request that you give the plan submitted by the NAACP your upmost [sic] consideration and that you use it as a foundation to create black minority [sic] districts. All parish citizens must be represented in the democratic process which governs our schools and by having them included, we create a school system that is strong, effective and impartial.

Therefore, we urge you to reject any plan that does not provide true representation for all citizens of the parish. This does include rejection of districts that parallel with existing or recommended lines of the election districts of the Bossier Parish Police Jury.

## Respectfully submitted:

- /s/ GEORGE PRICE
  GEORGE PRICE
  NAACP
  Men's Club of Bossier
- /s/ JERRY HAWKINS
  JERRY HAWKINS
  Concerned Citizens
  Men's Club of Bossier
- /s/ JAMES ABRAMS
  JAMES ABRAMS
  Voters League
- /s/ MARY WIGGINS
  MARY WIGGINS
  Bossier Housing
  Tenant Coalition
- /s/ ANDREW DAVIS
  Concerned Parents of Plan Dealing

#### NAACP REDISTRICTING PROJECT

#### **MEMORANDUM**

To: George Price, Bossier Parish NAACP

From: Samuel L. Walters, Assistant General Counsel

Ian Millett, Redistricting Analyst

Date: September 24, 1992

Re: Redistricting of Bossier Parish School Board

NAACP Proposal for Election Districts "Legal Opinions" Given to Board by

Gary Joiner

In light of our recent conversation in which you informed me of the proceedings before the Bossier Parish School Board, I wish to provide you with the following information which you can use in advocating your position before the Board. Some of these points have been made by you before, but it might be useful for you to have received the information from a lawyer since no attorney is stepping forth to tell the Board the undisputed principles of law that should control the redistricting of the Board.

 The laws and Constitution of the United States are superior to those of Louisiana or any other state.

The laws and Constitution of the United States are always supreme to those of the various states. The Louisiana law stating that election districts must be created from whole precincts must give way to the requirements of the Voting Rights Act and the U.S. Constitution. While it might be true that adoption of school board district lines that cross existing precinct lines is a violation of that Louisiana law, that is not a sufficient justification for violating Federal law. In all likelihood the oath of office taken by each of the current school board members included a pledge to uphold the laws and Constitution of the United States. The current board members should be mindful of this. The law requiring use of precincts is not in and of itself illegal, but it is a violation of the Voting Rights Act if its implementation causes dilution of the minority vote. Such is clearly the case in Bossier Parish.

Terrebonne Parish tried to use this argument to avoid creating a majority black district and our challenge to the Justice Department resulted in them having to redraw their lines to create a third district. These districts were created using census blocks.

2. Mr. Gary Joiner is a map drawer, not a lawyer, and his attempts at giving legal advice should be treated accordingly.

It seems that the local lawyers are abdicating their responsibility to provide the board with sound legal advice and are letting Mr. Joiner step into this vacuum and give "legal evaluations" of the various plans now before the board. Mr. Joiner is not a lawyer and is not aware of all of the legals ramifications of these evaluations. Furthermore, the evaluations are simply wrong. However, what is more disturbing is the fact that Mr. Joiner knows that the law is contrary to the opinions he is giving to the board. He and I have had conversations where he acknowledged that using the whole precinct law in this case and several others prevents or impedes

the creation of a majority black district and thus constitutes a violation of the VRA. He also understands the concept that Federal law is supreme.

3. The fact that the Justice Department precleared the earlier plan does not in anyway [sic] mean that the School Board's submission of the same district lines will be precleared or that they will withstand a lawsuit.

The Police Jury plans were precleared without any opposition. Since there were no presentations of alternate maps showing that other configurations offered more empowerment opportunities for the black community, the Justice Department probably didn't look at the Police Jury lines too hard. If the School Board persists and passes the same district lines, they can be assured that the NAACP Redistricting Project will assist the local Branch and a letter of opposition and the alternate maps to the Justice Department before the Parish's submission is even into Justice.

Even if the Justice Department were to preclear the same plan, such preclearance does not make the Parish immune from litigation. The Votings Rights Act specifically states that Justice Department preclearance under Section 5 does [not] determine the outcome of litigation filed under the more general provision of Section 2, nor does it preclude the filing of such litigation.

## November 8, 1993

Presentation To The Bossier Parish Police Jury

To: Bossier Parish Police Jury

From: George S. Price, President, Bossier Parish

N.A.A.C.P.

Greetings; etc.

Our purpose for appearing before the Bossier Parish Police Jury today is two fold. First, to discuss the Reapportionment Re-Districting process and secondly, the general management of our Parish and the lack of minorities in this process or a part of this process, ie., jobs, contracts, and management positions as they relate to the number of blacks in Bossier Parish.

In reference to my letter dated October 7, 1993, I appreciate the prompt response from Mr. Ramsey. I must confess that the information I was given as it pertain [sic] to your re-districting plan was in error and incomplete. I apologize for not doing my homework, however, the fact still remains that during the redistricting process of 1990, the Police Jury of Bossier Parish failed to address the issues raised by the Black citizens of this Parish. And in fact failed to include that information presented by the Black Community in the completed Re-districting Plan submitted to the Justice Department that was in fact Pre-cleared.

This plan although pre-cleared by the Justice Department is not representative of the Parish. It, in fact, doesn't allow a single district where Black Citizens are a majority, although such a district could have been

drawn. Additionally, current districts lines doesn't insure that all Parish Citizens are able to exercise their rights as guaranteed under the 14th Amendment and the 1965 Voting Rights Act. Additionally, the same plan that was pre-cleared without opposition for the Police Jury has not received the same approval for the School Board. Hence we now have a dilemma. As the governing body, responsible for developing precincts, the Bossier Parish Branch N.A.A.C.P. and other groups here-by call upon you, the Bossier Parish Police Jury and the Bossier Parish School Board to publicly meet and develop a re-districting plan that will increase the number of minorities on these board [sic] and that more adequately reflect the make-up of this parish. All citizens of Bossier Parish have a inherited right to be a part of this (these) [sic] governing bodies that shape through policies and laws our lives, and the lives of our children. Current re-districting plans now being considered will be the basis for elections during the next 10 years. The Black Community cannot afford to want for a more appropriate time, the time is now—and the purpose is noble; to be included or to be excluded. So today, I call upon the Bossier Parish Police Jury to meet with the Bossier Parish School Board and together develop a plan that will insure that the population of the Parish is accurately reflected on these two governing bodies.

Also, the N.A.A.C.P. of Bossier Parish and other groups I represent expect to be a working partner in finding a just and fair solution to this problem.

Second. Employment in all agencies supervised by the Bossier Police Jury.

We believe that examples begin at home. Therefore, we think that the Police Jury office should reflect a variety of employees based upon the ethnic make-up of the Parish. More blacks should be assigned and employed throughout the Parish. We also believe the Police Jury should seize this opportunity to appoint a Black Assistant Administrator to assist the incoming Administrator. We also believe more managers and supervisors are needed to insure inclusion of all Parish citizens.

The Bossier Parish Branch N.A.A.C.P. and other Parish groups are committed to working together with our elected officials to develop and promote a Parish governing body that adequately reflect the tax paying citizens of this Parish. Our call for inclusion cannot go unanswered. We must be included to make this Parish all that it can be.

Thank you.

George S. Price, President Bossier Parish Branch N.A.A.C.P.

cc: Concerned Citizens of Bossier Parish Housing Tenants Coalition Bossier Parish Voters League Bossier Men's club

## [NAACP Letterhead omitted]

July 14, 1993

Mr. Barry Musgrove Bossier Parish School Board P.O. Box 2000 Benton, LA 71006-2000

Dear Mr. Musgrove:

There continue to be issues brought before our organizations concerning our school system. Many of these concerns are issues that you and I have personally discussed, or have been before the Bossier Parish School Board. In the interest of remaining focused on the betterment of our school system and our children, I respectfully request, in the name of our organizations, that our School Board address these concerns listed below. We request your response as to steps you will take to resolve these concerns.

- The establishment of a community advisory group
   —which would supply input to the School Board
   concerning educational matters.
- Recruitment and placement of black teachers and administrators in the Bossier Parish School System.
- Plans to address the low math/science scores of our children, to include scores of Bossier Parish students, along racial lines.

- 4. The updated status of the Bossier Parish School Board Redistricting Plan.
- Establish a committee to study the possibility of including a black history year round program in the Bossier Parish School system. Possibly, eliminate Black History month.
- Provide our organizations with the policy and procedure for bidding on contractual services provided to the school system. Also including a list of such contracts whenever they are let for bids.
- 7. Provide our organizations with a list of recent contractors that have completed work for the Bossier Parish School System. Please include whether or not any of those were minorities.

Barry, I am committed to enhancing the educational system of Bossier Parish. I will eternally feel that an effective and progressive system must include fair and equal treatment for all students. I want to work with you and the Board to make this a reality. I stand ready and am willing to assist you in any capacity.

We can work together to make our system better.

Respectfully,

/s/ GEORGE S. PRICE
GEORGE S. PRICE
President
Bossier Parish Branch N.A.A.C.P.

cc: Concerned Citizens of Bossier Parish Men's Club of Bossier Voting League of Bossier Parish



# In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

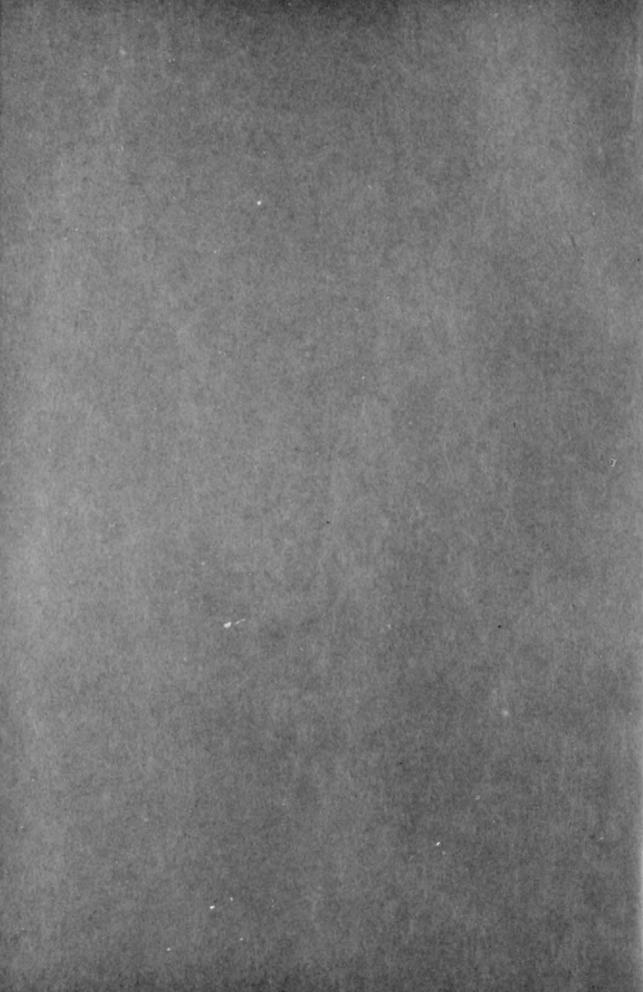
### JOINT APPENDIX (VOLUME 2)

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NOTICES OF APPEAL FILED: July 6, 1998 PROBABLE JURISDICTION NOTED: January 22, 1999

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[NAACP Letterhead omitted]

August 10, 1993

Mr. Barry Musgrove, President Bossier Parish School Board

Mr. W.T. Lewis, Superintendent Bossier Parish School System

This informal response is provided to you as a follow-up to our presentation on July 15, 1993.

The Executive Committee of the Bossier Parish Branch N.A.A.C.P. and other organizational leaders met on July 20, 1993 to discuss the best method of providing recommendations to you that we feel will improve certain areas of our school system. We hope the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns.

Members of our community stand ready and willing to do whatever we can to impact the concerns raised by our community.

Sincerely,

/s/ GEORGE S. PRICE
GEORGE S. PRICE
President
Bossier Parish Branch N.A.A.C.P.

#### The Coalition of Bossier Parish

Concerned Citizens of Bossier Parish, Men's Club, Concerned Citizens of Plain Dealing, Bossier Parish Branch N.A.A.C.P.

### Suggested Solutions To Concerns

Mr. Barry Musgrove, President, Bossier Parish School Board

Mr. W.T. Lewis, Superintendent, Bossier Parish School System

This informational response is provided to you as a follow-up to our presentation on July 15, 1993.

The Executive Committee of the Bossier Parish Branch N.A.A.C.P. and other organizational leaders met on July 20, 1993 to discuss the best method of providing recommendations to you that we feel will improve certain areas of our school system. We hope the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns.

Members of our community stand ready and wiling to do whatever we can do to impact the concerns raised by our community.

#### Suggested Solutions:

 The Educational Committee of the Bossier Parish Branch N.A.A.C.P. will be responsible for providing input to the School Board and the Superintendent on minority matters. The Committee will also serve as the communication vehicle between our organization and the Bossier Parish School System. The Committee will

- provide its finding and receive support from the Branch President.
- The issue of teacher recruitment concerns us greatly. We strongly feel that additional efforts can result in the placement of additional minority teachers into the Bossier Parish System. The following steps may help.
  - a. Expand the area of recruitment to include the entire state of Louisiana, East Texas and Southern Arkansas.
  - b. Monitor each school for minority hiring.
  - c. Set pre-hiring standards and goals for each school. Additionally, require schools to reflect a more accurate percentage of teacher to student ratio according to race.
  - d. Place qualified applicants in schools according to need. Do not leave placement (acceptance or rejection) solely to the discretion of the Principles [sic].
  - e. Add community professionals to the recruitment team and give the team the authority to make a commitment for employment to qualified candidates while on recruitment trips.
  - f. Tap high achievers (High School Seniors) and provide financial assistance to them to include a contractual agreement for employment upon successful completion of all requirement [sic] (similar to the South Carolina Plan).

- g. Insure compliance with the 1970 consent decree show [sic] 75/25 hiring ratio until requirements are met. Currently, we're not in compliance.
- Student performance in the area of math/science can be improved. We feel that the following steps wil[l] help.
  - a. Establish an extended school program that will encounter those students who are not achieving at a satisfactory level or working below grade level. To include a summer program if necessary.
  - b. When available, add black counselors to schools with high minority populations. This will help improve communication between teachers and students. This may also effect the number of behavior problems that we now have.
  - c. Hire an administrative field representative that is knowledgeable in curriculum to address student progress parish wide with the added responsibility to make recommendations to the Bossier Parish School Board and the Superintendent on ways to improve the levels of student achievement.
- 4. As you know, race relations in our schools are not very good. We still have segregation within an integrated environment. Based on my knowledge, I recommend you establish a Race Relations Program for the Bossier Parish School System.

- Set as a School Board agenda goal to end attendance certificates and social promotions.
  - a. Integrate a vocational program into the system that will benefit those students who are receiving a 12 year certificate of attendance. Thereby resulting in them receiving some type of skill that is in demand.
  - The afore mentioned number, 3a, will correct these deficiencies.
- 6. Special education programs must be given greater priority. Once the number of students in such programs continue to increase, valid programs must be instituted to meet the needs of these students (see 5A). Resources and priorities must be changed to meet these challenges.
- 7. Junior High School is considered an educational Bonanza for our students. During these years, role models and peers take on added importance. Because of the unquestionable importance of Junior High School. We urge the Board and Superintendent Lewis to upgrade the proposed coordinator positions at Rusheon and Princeton Junior High Schools to Assistant Principle [sic] positions and fill them with black administrators. There are no black administrators at the Junior High level in the Bossier Parish School system.
- 8. The original criteria set for the Achievement Center at Butler School has apparently changed. Can anyone define the purpose of the Achievement Center in relations to its original plans.

What do[es] the Bossier Parish School system offer at-risk students?

#### Summary:

Semi-annual reports indicate that the Bossier Parish School System is functioning according to the guidelines laid down in the consent decree of 1970. However, a study of these reports that go back to 1970 indicate otherwise. Since 1970, we have seen a steady decline in the number of black teachers and administrators in the Bossier Parish System while the number of black students continue to increase. We have also noted that the number of white teachers and administrators have continued to increase while the white student population have declined.

Based on the information contained in your reports. Black teachers has declined in our system by more than 43% down from 186 in 1971 to 107 in 1992 while white teachers increased by more than 48% up from 695 in 1971 to 1029 in 1992.

Student population has not kept pace with these figures, in fact, student population figures are exactly opposite. For example, in 1971, black students made up 22% of the student body while whites accounted for 77%. In 1992 blacks comprised more than 28% of the student body while whites declined to 70% down, more than 8%. This data shows an overall increase of over 6% for blacks and a decrease of 8% for whites.

Accordingly, we feel a similar trend should be reflected in the number of teachers and adminis-

trators. However, the opposite has happen. We call upon the Bossier Parish School Board and School System to take immediate steps to reverse these trends.

Thank you,

/s/ GEORGE S. PRICE
GEORGE S. PRICE
President
Bossier Parish Branch N.A.A.C.P.

Excerpts from Appellant-Intervenors Exhibit E (Final Direct Testimony of Appellant-Intervenor Thelma Harry dated April 9, 1995)

[7]

16. On several occasions in recent years, the NAACP has presented the School Board with a list of concerns about the operation of the school system. These lists have been developed from meetings of the executive committee of the NAACP where we tried to take all of the many complaints we had received about the school system and put them into categories. Most of these lists have contained the same problems over and over as no action ever seems to be taken to solve the problems. After one time when we presented them with a list of some of our complaints, the School Board set up a Community Affairs Advisory Council in early 1993. This was to be a committee of six people selected by the NAACP and six people selected by the School Board. I was one of the representatives selected by the NAACP. There were two preliminary meetings to establish the Council and its membership. Then regular meetings were to be held monthly. After only one regular meeting, we received a letter, dated March 16, 1993, stating that the School Board had canceled the Council. A copy of the letter that I received from the School Board announcing the disbanding of the committee is attached as Defendant-Intervenors' Exhibit 17. We were also told that the Council had to be canceled because there was already a Bi-Racial Committee established by the consent decree from the school desegregation suit and this one would be illegal. We were angered and disappointed at the cancellation of the Council, but we were not really surprised as it seems that the School Board and school system do not really want to deal with the problems that face the black students and parents. Many of us had no knowledge that there was any such Bi-Racial Committee in existence with which the Council could have conflicted. Then we found out that the annual reports which the School Board had been sending to the Court and the Department of Justice left the impression that the original Bi-Racial Committee was still functioning when in fact it had not met in years. This made the leadership and membership of the NAACP and other groups very disappointed and angry.

\* \* \* \* \*

Excerpts from Appellant-Intervenors Exhibit E (Supplemental Testimony of Appellant-Intervenor Thelma Harry dated April 9, 1995)

\* \* \* \* \*

After one of the meetings of a group of NAACP members and a few school board members in 1993 (see paragraph 17 of the Final Direct Testimony of Thelma Harry), Mr. George Price and I had a conversation with Mr. Tom Myrick. Things in the meeting itself had been somewhat on edge because it was clear that the representatives of the black community were not going to be satisfied by more promises to look into problems, but wanted concrete steps taken to solve the problems. During this meeting, one of the issues we had raised was the fact that the Plain Dealing High School was the only high school in the parish that did not get any money for computer purchases from a program called BEEF. Plain Dealing is in the northern part of the Parish in Mr. Myrick's district. It is the only majority black high school in the parish. After the meeting, Mr. Myrick complained that we were always trying to take his seat and stated that he was not going to let us take it away from him.

. . . . .

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

#### Civil Action No. 94-1495 (LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

#### versus

JANET RENO, DEFENDANT
GEORGE PRICE, ET. AL, DEFENDANT INTERVENORS

#### DIRECT TESTIMONY OF DAVID CREED

- 1. My name is David Arnold Creed. I am the Director of North Delta Regional Planning & Development ("North Delta") in Monroe, Louisiana. I have held this position for 14 years.
- North Delta provides technical assistance and demographic advice to governmental bodies throughout the northeastern Louisiana region.
- 3. One of the services we provide is consultation concerning, and the development of, reapportionment plans. We draw redistricting maps and precinct maps for school boards, parishes, and municipal governments in Louisiana. In addition, I testified in the lawsuit of Knight v. McKeithen, No. 94-848-A. 2 (M.D. La. August 19, 1994), on behalf of the defendant East Carroll School Board.

- 4. As a result of our redistricting work I am familiar with the requirements of both federal and state law concerning reapportionment in Louisiana. In particular, I am familiar with the preclearance requirements Section 5 of the Voting Rights Act and with Act 925, the Louisiana Statute limiting the ability of local school boards to alter precinct lines.
- 5. Over the past two years, I have worked with several governmental entities on reapportionment projects which have involved potential conflicts between the Voting Rights Act and the precinct-splitting law. In none of these situations have the limitations on a school board's ability to split precincts prevented the adoption of a redistricting plan that met the requirements of Section 5.
- 6. For example, we worked with the West Carroll Parish School Board in developing its redistricting plan. West Carroll was unable to develop a reapportionment plan which met the requirements of the Voting Rights Act without splitting some precinct lines. However, after the Department of Justice precleared West Carroll's plan it was able to satisfy state law requirements by having the West Carroll Police Jury, the parish governing body, alter existing precinct lines.
- 7. Likewise, we worked with the Franklin Parish School Board, whose situation was similar. Franklin needed to split precincts to satisfy Section 5 requirements. We helped the Franklin Parish School Board develop new precinct maps and descriptions which it submitted to its police jury for approval.
- 8. In both West Carroll and Franklin Parish, the school boards paid the police juries' costs in establish-

ing new precinct lines, which amounted to one or two thousand dollars in each case. Once the school boards agreed to cover these costs, the police juries expressed no further reservations about adopting the precinct changes necessary for the school boards to implement election plans in compliance with federal law.

- 9. We also worked with the Ouachita Parish Police Jury and Registrar of Voters in drawing and describing new precincts for used [sic] by the Monroe School Board, a metropolitan district within Ouachita Parish.
- 10. Although municipal governments in Louisiana, as opposed to school boards, are not governed by the restrictions of Act 925, they also frequently have to rely on parish governing bodies, usually the parish policy [sic] juries, to alter precinct lines. For example, many small municipalities with single member districts have more seats in municipal elections than there are regular precincts within the borders of the municipality. This is another occasion in which police juries are frequently called upon to "split" precincts.
- 11. Such precinct-splitting raises few practical difficulties. To establish new precincts requires new maps, legal descriptions, and a resolution by the parish governing body. To implement them requires new polling places, or more simply the use of lockouts or additional machines at existing polling places. These efforts were the principal sources of the costs identified in paragraph 8 in West Carroll and Franklin Parishes.
- 12. Police juries and school boards in Louisiana also frequently adopt different single-member election districts. For example, five or six of the 11 parishes in

my planning district have different election plans for school board and policy [sic] jury.

13. In sum, while I have observed several instances of apparent tension between the requirements of Section 5 of the Voting Rights Act and Louisiana's precinct-splitting statute, this tension has been fairly easily resolved by several school boards with which I am familiar.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of February, 1995 in the City of Monroe in the Parish of Ouachita, State of Louisiana.

/s/ DAVID ARNOLD CREED
DAVID ARNOLD CREED

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495 (LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

Versus

JANET RENO, DEFENDANT
GEORGE PRICE, ET AL, DEFENDANT INTERVENORS

#### SUPPLEMENTAL TESTIMONY OF DAVID CREED

- 14. I heard Mr. Joiner testify that he informs school boards of all of their redistricting options. I also do the same. This includes informing them about Act 925, the Louisiana statute limiting precinct splits by school boards. In helping to prepare redistricting plans based on the 1990 census, I also informed school boards that one of their options was to adopt a plan splitting precincts and ask the police jury to establish the necessary new precincts. I also informed them that if they adopted a plan with a number of seats different than the police jury, that they had the ability themselves to establish some new precincts prior to December 31, 1992.
- 15. In addition, I informed school boards about the Voting Rights Act, including the possibility that its requirements may conflict with Act 925. I informed

clients that in such a situation federal law prevails and claiming that they are unable to split precincts is not a valid excuse. I would not consider myself to have done my job as a consultant if I had not informed them of this matter and others.

- I heard Mr. Myrick and Mr. Musgrove say that they relied on Mr. Joiner's statement that they could not split precincts. In my experience, this would be unusual. Board members normally ask many questions, are nearly always concerned about incumbency, and usually direct me to prepare a plan different than what I originally recommend. This is also the case with my colleagues in the other Planning and Development Districts around the state of Louisiana. For example, when I initially told the West Carroll Parish School Board that they likely would need to have a black majority district, some individual board members told me that they did not wish to be "blamed" for this and that if they had to, it would be better if it were construed to be forced by the "federal government." As I testified in my original direct testimony, this happened.
- 17. I heard Mr. Joiner testify about his estimates of the cost of holding elections with additional precincts. In my view, his estimates represent total costs and not costs to the local school board. Furthermore, they represent a worst case scenario in terms of total costs because they:
  - assume separate election commissioners and supervisors for every precinct;
    - (2) assume that lockouts could not be used; and

(3) assume that police juries would not reconsolidate precincts.

All of these assumptions are unlikely.

- 18. Mr. Joiner's rebuttal testimony misses the point of my direct testimony concerning municipal elections in Louisiana. That point is that police juries in virtually all sixty-four of Louisiana's parishes have to deal with precinct splitting by municipalities. While this splitting is not prohibited by state law, it still requires local government bodies to incur the same costs and inconveniences of precinct splitting that school boards do when they must ask police juries to split precincts.
- 19. I heard Mr. Joiner testify about his concern about precinct splitting. In my work, I am called upon to help governmental bodies develop precinct lines. Precincts are drawn largely based on geographical concerns rather than demographic characteristics of the population. They vary widely in the number of voters per precinct and are somewhat arbitrary.
- 20. I disagree with Mr. Joiner's definition of gerrymandering. To me there is a difference between attempting to draw a black majority district and racial gerrymandering. The difference is that gerrymandering involves drawing voting districts in a tortuous or convoluted way in order to render contiguous pockets of minority population that cannot be connected consistent with normally redistricting principles.
- 21. I recently was shown the Bossier Parish School Board's proposed redistricting plan and the illustrative plan developed by Bill Cooper without being told which was which. In my opinion, neither contains districts that appear to be gerrymandered. Furthermore, I

concluded that neither plan on the whole was any more "gerrymandered" in its appearance than the other. Both appeared to have districts that were sufficiently compact and contiguous.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of April 1995 in the Washington, D.C.

/s/ DAVID ARNOLD CREED
DAVID ARNOLD CREED

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

#### Civil Action No. 94-01495 (CRS) (LHS) (GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

V.

JANET RENO, DEFENDANT
GEORGE PRICE, ET. AL, DEFENDANT INTERVENORS

#### FINAL DIRECT TESTIMONY OF WILLIAM S. COOPER

#### **Direct Testimony of William S. Cooper**

- 1. I am William S. Cooper and I reside in Richmond, Virginia. I serve as a redistricting consultant for the defendant-intervenors in this lawsuit. I have a B.A. degree in Economics from Davidson College in Davidson, NC. In addition, I completed graduate courses in urban and regional planning at Virginia Polytechnic Institute and State University in Blacksburg, VA.
- 2. I have been employed since 1986 by the American Civil Liberties Union of Virginia, Inc., the Virginia affiliate of the American Civil Liberties Union, and the American Civil Liberties Union of Virginia Foundation, Inc.
- 3. Since 1986, I have prepared redistricting maps in approximately 325 jurisdictions for Section 2 litigation, Section 5 comment letters, and for use in other efforts

to promote compliance with the Voting Rights Act of 1965. I have prepared election plans for Section 2 litigation in Connecticut, Florida, Georgia, Louisiana, Maryland, Nebraska, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and Tennessee.

4. The report I prepared for this case, entitled Report of Williams S. Cooper and its appendix provide further details regarding my experience as an expert witness and my qualifications relating to redistricting and geographic information system software. That report is attached to this testimony as Exhibit 13.

#### Bossier Parish Redistricting: Methodology and Sources

- 5. I am familiar with the manner in which census data is collected and compiled by the United States Bureau of the Census for use in redistricting.
- 6. I use the 1990 Bureau of the Census PL 94-171 data file for my redistricting work. The PL 94-171 file is the population file designed by the Bureau of Census primarily for use in reapportionment of state and local governments. The file contains basic data on the population and voting age population found in units of census geography such as states, counties, municipalities, precincts, census tracts, and census blocks. It breaks this data down among the major racial and ethnic groups is [sic] our society, containing information about the following population and voting age population categories: white, black, American Indian/Eskimo, Asian, Hispanic, and Other Minority.
- 7. I also use the Bureau of the Census TIGER (Topologically Integrated Geographic Encoding and Referencing) files. The TIGER files contain data

recording the longitude and latitude coordinates of the boundaries for all of the geographic units that were used in the 1990 census. Using geographic information system (GIS) software which was specially developed by a number of companies to use the TIGER files, it is possible to create digitized maps for display and analysis on computer screens of any state, county, or locale in the United States. The programs allow for the thematic display of any census data that one wishes to analyze.

- GisPlus, the geographic information system software I used since 1991, converts the data in the TIGER file into an on-screen map. I use the GisPlus software on a 386-33DX IBM compatible personal computer.
- 9. With the GisPlus software and similar geographic information system software packages, voting plans can be developed using units of census geography from precincts down to census blocks. A census block is the smallest geographic tabulation area from the 1990 census. A block may be as small as a regular city block bounded by four streets, or as large as several square miles in a rural area. Census blocks are bounded on all sides by visible features such as streets, rivers, and railroad tracks or, occasionally, by nonobservable political boundaries such as municipal or township lines.
- 10. I have used the GisPlus software, together with the Census Bureau's PL 94-171 file and TIGER files, in all of the redistricting work I have conducted relating to the Bossier Parish School Board. All districts were drafted at the census-block level. I have also done analysis on a database for Bossier Parish constructed by Gary Joiner, the redistricting consultant for the School Board. This database was also constructed on

GisPlus, as Mr. Joiner also uses this program for some of his work.

#### Population and Geographic Characteristics of Bossier Parish

- 11. I have looked at the data for Bossier Parish found in the PL94-171 files and summarized the basic population characteristics of the parish. According to the 1990 census, Bossier Parish, Louisiana has a population of 86,088, with a black population of 17,381. Bossier Parish has a total voting age population of 60,904 and black voting age population of 10,784. African Americans comprise 20.2% of the total population and 17.7% of the voting age population in Bossier Parish. Throughout my testimony, the terms "black" and "African-American" are used interchangeably. Also, I make no distinction between Hispanic blacks and non-Hispanic blacks. According to the 1990 census, of the 17,381 blacks in Bossier Parish, 380 (2.19%) are Hispanic.
- 12. Using data from the GIS database, it is also possible to ascertain some of the basic physical features of Bossier Parish. The parish encompasses an area of 854.27 square miles. The Parish is bounded to the north by the state of Arkansas. The Red River runs along the western length of Bossier Parish, separating the Parish from neighboring Caddo Parish. Red River Parish lies to the south. Webster and Bienville Parishes are to the east. The Parish is 59 miles long from the extreme northwest to the extreme southeast.
- 13. The bulk of the black population of Bossier Parish is concentrated in Bossier City and in and adjacent to the Parish's three other municipalities—Benton, Plain Dealing, and Haughton. Bossier City has

the largest population of the four municipalities, with 52,721 residents, of who 9,521 (18.06%) are African-American. Thus, 54.78% of the African-Americans in Bossier Parish live in Bossier City. Benton has 2,047 residents, of whom, 849 (41.48%), are African-American. Plain Dealing has 1,074 residents, of whom 354 (32.96%) are African-American. Haughton has 1,664 residents, of whom 464 (27.88%) are African-American. The combined African-American population in all four municipalities is 11,188. Black residents in the four municipalities represent 64.37% of the parish-wide black population.

#### District Election Plan for the Bossier Parish School Board

- 14. In July, 1994, counsel for the defendant-intervenors asked me to determine whether it is feasible to develop district election plans for the 12-member Parish School Board, such that African-Americans would constitute a majority of the voting age population in one or more districts.
- 15. In response, I developed a plan for the Bossier Parish School Board with two majority-black voting age population districts. Maps describing this plan with summary population data are attached as Defendant-Intervenors' Exhibit 18. The plan is labeled "Plaintiffs' 12-district Plan", since it was prepared for testimony in Knight v. McKeithen, a case in which all of this case's intervening defendants were the plaintiffs.
- 16. Under the plan shown in Defendant-Intervenor's Exhibit 18, Districts 2 and 8 are majority-black. District 2 is entirely within Bossier City. District 2 has an African-American voting age population of 54.1%. District 8 is in the north and central portion of the Parish,

encompassing portions of Plain Deal and Benton. District 8 has a black voting age population of 58%.

- 17. The overall deviation for the plan is 8.85%. The plan complies with the guidelines governing redistricting, including but not limited to the principle of one person, one vote, the prohibition on diluting minority voting strength, and other factors such as contiguity and compactness. All of the plans and districts that I have created for Bossier Parish fall within + or -5% deviation, insuring conformance with the one-person, one-vote standards that apply to local governments. In comparison, the redistricting plan both adopted by the Bossier Parish Police Jury and submitted to the Department of Justice by the School Board has a total deviation in excess of 10%.
- 18. In drafting "Plaintiffs' 12-District Plan", I did not have access to information regarding the location of the residences of current School Board members. In addition, I was not provided with a map showing boundaries for the 13 new precincts that were created after the 1991 Police Jury redistricting in Bossier Parish.
- 19. Using the Census Bureau's TIGER files, I was able to identify the precinct boundaries for the 43 precincts (called voting tabulation districts by the Census Bureau) that existed prior to the 1991 redistricting of the Police Jury. I took these precinct boundaries into consideration when creating Defendant-Intervenors' Exhibit 18. Occasionally, I made the outline of a district more irregular than it would have been if I had disregarded the precinct lines.

#### Additional Configurations for Majority-Black Districts

20. In September, 1994, counsel for defendant-intervenors instructed me, for illustrative purposes only, to prepare other configurations for the majority-black districts. First, I was asked to redraw the two majorityblack districts found in Defendant-Intervenors' Exhibit 18 for the purpose of getting the highest possible black voting-age population in each district while using only de minimis standards of compactness and contiguity, but staying within the +5% deviation range that insures compliance with the one person, one vote doctrine. These illustrative configurations are attached as Defendant-Intervenors' Exhibit 19. The Bossier City district, labeled "District 2A - Maximum Black Percentage", has a black voting age population of 59.1%. The district in the north-central portion of the Parish, labeled "District 8A - Maximum Black Percentage", has a black voting age population of 61.1%. The Bossier City district has a deviation of -4.84%. The district in the north-central part of the Parish has a deviation of -4.86%. These two districts are drawn so as to allow for the creation of the remaining ten districts in a manner meeting applicable legal requirements. They show the shape of districts that would result if capturing concentrations of minority population were the overriding focus in creating the districts. These illustrative configurations show that the majority-black districts proposed by the defendant-intervenors in the Knight litigation for use in School Board elections do not maximize black voting age population. Likewise, comparison of the shapes of these configurations shows that the majorityblack districts proposed by the defendant-intervenors in the Knight litigation are substantially more regular in shape than the districts that maximize black voting age population.

- 21. Second, I was asked to create other configurations for the larger of the two majority-black districts, District 8, which is located in the north-central portion of the Parish. These configurations were to be drawn with the objective of creating a somewhat more regularly shaped district than District 8 under the plan shown in Defendant-Intervenors' Exhibit 18.
- 22. I produced two options displayed in Defendant-Intervenors' Exhibit 20. "District 8B" has a black voting age population of 54.2%, "District 8C" has a black voting age population of 55.3%. The deviation for the two districts is -4.68% and -4.67%, respectively. Both districts encompass portions of Benton and Plain Dealing. Each of these districts is drawn so as to allow for the creation of the remaining eleven districts of the School Board in a manner meeting applicable legal requirements.
- 23. I also have compared several configurations of District 8, the north-central majority black district, with those for District 4 of the proposed School Board and existing Police Jury plan. District 4 is a majority white district. This analysis reveals that District 4 is also centered in the north-central portion of the Parish. It has a land area of 424 square miles (49.62% of the area of the entire Parish) and is 33.5 miles long from the extreme northwest to the extreme southeast. District 8, as shown in Defendant-Intervenors' Exhibit 18, has a land area of 276 square miles and is 34.5 miles long from the extreme northwest to the extreme southeast. In contrast, "District 8B" has a land area of 218 square miles and is 31.5 miles long from the extreme northwest

to the extreme southeast. "District 8C" has a land area of 252 square miles and is 34.5 miles long from the extreme northwest to the extreme southeast. Each of these configurations of District 8 that I have developed is virtually identical in length to the School Board's proposed District 4 and has a land area considerably less than that of the School Board's proposed District 4. Chart[s] comparing these district lengths and areas are attached as Defendant-Intervenors' Exhibits 30 and 31.

24. Based on the preceding analysis, in my opinion, the majority-black districts proposed in the *Knight* litigation are reasonably compact.

# Census Data Analysis of Relative Socio-Economic Status Methodology and Sources

25. At the request of counsel for defendant-intervenors, I prepared tables and bar charts comparing socio-economic characteristics of the population by race for Bossier Parish, which is Defendant-Intervenors' Exhibit 21 to this testimony. I extracted the data for these tables and charts from the 1990 Census of Population and Housing Summary Tape File 3A on CD-ROM (Louisiana). The title of this data source is Census of Population and Housing: 1990: Summary Tape File 3 on CD-Rom Technical Documentation/ prepared by the Bureau of the Census. -Washington: The Bureau, 1992. This Census Bureau data source contains far more detailed information about the population of an area than the PL94-171 file referred to previously. I formatted the data and calculated the percentages using a computer spreadsheet, Microsoft Excel for Windows. The bar charts were also prepared with Microsoft Excel.

26. The five variables displayed in these tables and charts are listed below.

P58 RACE BY EDUCATIONAL ATTAINMENT

P71 RACE BY SEX BY EMPLOYMENT STATUS

P82 RACE OF HOUSEHOLDER BY HOUSEHOLD INCOME IN 1989

P115A PER CAPITA INCOME IN 1989 BY RACE

P119 POVERTY STATUS IN 1989 BY RACE BY AGE

H39 RACE OF HOUSEHOLDER BY VEHICLES AVAILABLE

27. According to the 1990 census, there are wide socio-economic disparities between African-Americans and whites in Bossier Parish.

African-Americans experience a poverty rate that is nearly five times the poverty rate for whites. In 1990, there were 7,380 African-Americans (44.67%) living below the poverty line in Bossier Parish, while 5,961 whites (9.09%) were below poverty.

The percentage of African-Americans living in households with incomes below \$15,000 is nearly three times as high as white households with incomes below \$15,000. In 1989, 56.37% of black households in Bossier Parish had incomes below \$15,000 compared to 21.71% of white households.

The per capita income of African-Americans is only 40% of that enjoyed by whites. The 1989 per capita income of the black population in Bossier Parish was

\$5,260 compared to \$12,966 per capita income for whites.

The unemployment rate for African-Americans is nearly four times the rate for whites. In April of 1990, the unemployment rate for persons 16 and over in Bossier Parish stood at 22.37% for blacks in contrast to 5.81% for whites.

The percentage of African-Americans without a high school degree is two times the percentage of similarly situated whites. Of African-Americans 25 years of age and over in Bossier Parish, 40.57% have not finished high school, while 16.68% of their white counterparts are without a high school diploma.

Black households are six times more likely as white households to be without access to vehicles. One-fourth of black households (25.87%) in Bossier Parish are without access to vehicles versus 4.17% of white households.

Therefore, I would conclude that there are substantial socio-economic disparities between the black and white populations of Bossier Parish.

### School Board's Proposed Plan Lack of Conformity with Redistricting Criteria

28. In the preparation of redistricting plans two of the most fundamental criteria that must be met in every plan are compliance with the one-person, one-vote doctrine and the contiguity of election districts. Except in unusual circumstances, every final election plan which a redistricting consultant prepares should have a total deviation of less than 10% in order to conform to the one person, one vote doctrine. The

principle of contiguity refers to the practice of having each unit of geography included in a district in an election plan connected by at least a part of one of its borders with part of one of the borders of another unit of geography in that same district. The usual practice is to have more than a mere point at this place of connection. There are virtually no exceptions to the doctrine of contiguity.

29. In order to calculate the total deviation for a plan, one must go through several steps using population information based on census data. First, the Ideal District Size must be calculated. This is done by dividing the total population of a jurisdiction by the number of seats on the legislative body. For Bossier Parish, the total population is 86,088. Dividing this figure by the 12 seats on both the Police Jury and the School Board yields an ideal size of 7,174 per legislative district. Then the analyst calculates the deviation for each district of the plan under consideration. This is calculated by subtracting the Ideal District Size from the actual District Population in the district and dividing that result by the Ideal District Size. This is then multiplied by 100 to get a percentage. The formula is as follows:

Population Variance =  $\underline{\text{District Population - Ideal Size}}$  x 100 Ideal Size

If the district you are inspecting has more people than the ideal size, the variance will be a positive number, meaning that this district is "underrepresented," while a district with fewer people will yield a negative number for its variance and is said to be "overrepresented."

30. The Total Deviation for the plan can be determined after one has calculated the Population Variance

for all of the districts. To calculate the total deviation, I identify the district with the largest positive variation and the district with the largest negative variation. I then convert the negative number into a positive one and add the two numbers together. For example, if the school district with the largest positive variance scored 3.65% and the one with the largest negative variance scored -4.1%, you would add the numbers and have a Total Deviation of 7.75%. This is the number that should be under 10%. The standard practice in the development of election plans is to keep the deviance range within +5% and Louisiana law (cite) states that this is what should be done to comply with the one-person, one-vote doctrine.

The police jury electoral plan adopted by Bossier Parish Police Jury which the School Board proposes to adopt as its election plan has a population deviation in excess of 10%. Mr. Joiner, who developed the plan, has testified that the total deviation is 11.75%. Counsel for the Defendant-Intervenors provided me with a GIS database for Bossier Parish given to them by Mr. Gary Joiner, redistricting consultant for the School Board. This database contains data on the election plan under consideration here and Bossier Parish population data as well as precinct boundaries. Using this database. I have determined that it is possible to make slight alterations to the current Police Jury plan so as to bring the deviation for that plan to within the 10% total deviation guideline. This can be accomplished by two easy steps. First, one simply rejoins the two of the three new precincts formed when Mr. Joiner split former precinct 2-18 between election districts 3, 4, and 6 as he created the 1991 Police Jury plan. By rejoining new precinct 2-10B with 2-18C and

putting all of this population in District 3, the District 3 population is closer to the ideal size. (7306 persons. deviation 1.84%) and is no longer the smallest district in the plan. The second step for getting under 10% is a bit more complex but is still not difficult to achieve. In creating Districts 8 and 5, Mr. Joiner found it necessary to divide old precinct 2-17 into 2 new precincts. New precinct 2-17A went to District 5, new precinct 2-17B was assigned to district 8, while new precinct 2-17C was put in District 4. Defendant-Intervenors' Exhibit 22 shows the current configuration of precincts 2-17A and 2-17B. The result was that District 5 had a population of 7607 and a deviation of 6.04%. If old precinct 2-17 is merely divided in a different manner, as is shown by Defendant-Intervenors' Exhibit 23, the populations of the two districts and their deviations are as follows: District 5 - 7219, deviation 0.65 % and District 8-7287. deviation 1.58%. After these simple changes, the deviation of the plan is reduced to 8.63%, based on Districts 2 and 6 which then have the extreme deviations with 4.84 and -3.79%, respectively. As further proof that it is possible to create a plan with a deviation under 10%, it should be noted that the election plans developed by the NAACP and the Knight plaintiffs all have a deviation under 10%. These elections plans are thus presumptively superior plans under the one-person, onevote doctrine to the plan adopted by the School Board.

32. As noted above, contiguity is also a fundamental redistricting criterion. Recent analysis that I have performed on the above mentioned database obtained from Mr. Joiner reveals that District 9 of the Police Jury plan proposed by the School Board is not contiguous. Not only do the two portions of this district fail to have common borders with one another, they do

not even share common point as the closest two points of these parts are over 100 feet a part. Attached as Defendant-Intervenors' Exhibit 24 are maps showing this. The first map, Defendant-Intervenors' Exhibit 24A, shows all of District 9, the area in dark green. along with portions of other districts in that area of the parish. Defendant-Intervenors' Exhibit 24B is close up detail of that area showing that two segments of District 9, again the area in dark green, do not even connect. The GIS database and program show the distance between the two segments to over 100 feet. These two segments of District 9 are whole precinctsprecincts which existed with the same boundaries in the previous plan but which were in a contiguous district due to the inclusion of another precincts [sic] in the previous plan.

- 33. All of the districts in the complete election plans submitted by the NAACP and the Knight plaintiffs are contiguous and in no instance is that contiguity accomplished by mere point contiguity. One of the exemplary districts submitted with my report, District 8A, part of Defendant-Intervenors' Exhibit 19, does have point contiguity, but that district was purposefully drawn to show what a district would look like that paid only minimal attention to traditional redistricting principles and sought to maximize the black voting age population in the district.
- 34. I have been requested by counsel, to use one of the alternative configurations of the majority black election district from the northern part of Bossier Parish, District 8C, that was part of Defendant-Intervenors' Exhibit 20, along with District 2 from the plan I developed in the *Knight* litigation, and created another alternative election plan for Bossier Parish. I

was asked to minimize the number of precinct breaks as I constructed this plan. The population characteristics of this plan are set forth in Defendant-Intervenors' Exhibit 25A. The total deviation of this plan is 9.16%. A map showing the configuration of this plan is attached as Defendant-Intervenors' Exhibit 25B and maps showing details around the municipalities are attached as Defendant-Intervenors' Exhibits 25C, 25D, 25E and 25F.

- 35. This new plan would require 27 additional voting machines, if no changes were made to the current precinct lines of Bossier Parish. It splits 24 precincts and would require that 9,270 persons of voting age to be assigned to the additional voting machines. Defendant-Intervenors' Exhibit 26 sets forth the data supporting this conclusions [sic]. If one used the precinct lines that were in effect before the 1991 redistricting of the Police Jury, only 22 precincts would have been split, with a total of 25 discrete splits. This is shown in Defendant-Intervenors' Exhibit 27.
- 36. Since precinct consolidation is possible under Louisiana law, I have also made a preliminary assessment of how the splits necessitated by this plan could be realigned into a smaller number of precincts. Defendant-Intervenors' Exhibit 28 shows that a precinct realignment based on this plan could result in as few as 46 precincts, three new precincts above the 1990 total, and a shift of 12,511 persons of voting age in new precincts. This precinct realignment is only an example. Different realignment configurations would be possible. These could result in either a smaller number of precincts or the reassignment of fewer people to new precincts. By contrast, the plan adopted by the Police Jury in 1991 had a total of 56 precincts, 13 above the

1990 total, and shifted 8,466 persons of voting age into different precincts. I did not have a detailed map showing current state legislative districts so this evaluation does not take into account state legislative districts, which could create the need for a few additional splits. It is clear, however, that a plan with two majority black districts could be adopted without significantly altering the number of election precincts in Bossier Parish.

37. I understand that the Bossier Parish School Board claims that it is unable to create any majority black district in the parish because that would require breaking existing precinct lines. It is not usual practice in the redistricting process, in my experience, to elevate the preservation of precinct boundaries over consideration of the one-person, one-vote doctrine, compliance with the Voting Rights Act, or redistricting principles such as compactness and contiguity. Precincts exist for the administration of voting. While it may raise administrative issues for precincts to be changed, or for different precincts to be used for election of different bodies, such as a school board and the police jury, those are issues that can be addressed by proper administration of the voting process, generally at modest or no cost, and I do not elevate such considerations over compliance with federal law in my work.

### Cane v. Worcester County—Plaintiffs' Proposed District

38. As is indicated by my report in this case, I prepared the election plans submitted by the plaintiffs in Cane v. Worcester County, 35 F.3d 921 (4th Cir. 1994). The County's claim that the plaintiffs' configuration violated the doctrine of Shaw v. Reno was rejected by both the District Court and the United States

Fourth Circuit Court of Appeals. A copy of the plan submitted by the plaintiffs in that case is attached as Defendant-Intervenors' Exhibit 29A. Close-up views of the area around the three towns which have part of their population in the district are attached as Defendant-Intervenors' Exhibits 29B, 29C, and 29D.

#### Conclusion

- 39. A comparison of the sample alternative that the NAACP and I have drawn demonstrates that redistricting of the 12 single member district Bossier Parish School Board using 1990 Census can be accomplished so as to create two majority-black districts while achieving superior results on one-person, one-vote and contiguity principles, and while creating fewer, but certainly a similar number of, voting precincts.
- I, William S. Cooper, do hereby declare, under the penalty of perjury, that, to the best of my knowledge, the foregoing information is true and correct.

April 8, 1995

/s/ WILLIAM S. COOPER
WILLIAM S. COOPER

[Referenced exhibits omitted from J.A. See Defendant-Intervenors Tab G: Exhibits 18-33 for originals] Excerpts from Volume I of Trial Transcript in Bossier Parish School Board v. Reno, C.A. No. 94-1495 (D.D.C.), April 10, 1995

Testimony of Appellee's witness Barry Musgrove -Cross Examination by the Appellants

BY MS. SARDESON:

[41]

Q And you are aware, are you not, that Police Juries can change precinct lines once they have been established?

Basically I understand that, yes, ma'am.

Q. And there is certainly no state law requirement that would prohibit a School Board, just as any other member, or any citizen of Bossier Parish, for that matter, from requesting of the Police Jury that they change there [sic] precinct lines?

## A. Restate, please?

- Q. You are not aware, are you, of any state law requirement that would prohibit the School Board, or any citizen of Bossier Parish, from requesting that the of the Police Jury that they change their precinct lines?
- A. I am not aware of any such law, no, ma'am.
- Q. And, in fact, that does, indeed, happen from time to time, are you aware of that?

- A. I would assume so, yes, ma'am.
- Q. So you would agree with me would you not, Mr. Musgrove, that there is no reason why a School Board could not develop its own redistricting plan, and if it split precincts, then go to a Police Jury with a request to reconfigure its precincts to accommodate that plan?

MR. THORNTON: Objection, Your Honor.

THE COURT: Overruled.

[42]

MR. THORNTON: She said -

THE COURT: Overruled. Overruled.

THE WITNESS: Ms. Sardeson, I am comfortable with addressing the Bossier situation, but I am not real comfortable addressing any other parish situation. I assume that any parish can do anything that they have a desire to do.

But in our situation, our initial hope was to jointly develop a plan between the two public bodies, and when that did not come to fruition, the Police Jury said that they were going to do their own thing, and when that went out the window, then we proceeded in the other direction of retaining Mr. Joiner.

#### BY MS. SARDESON:

Q. My specific question to you, and I will put that in Bossier Parish then. You are not aware of any state law requirement, are you, that would have prevented the School Board, the Bossier Parish School Board, from developing a redistricting plan, or discussing developing a redistricting plan that split precincts, and if it did that going to the Police Jury to—and requesting it to reconfigure the precincts to accommodate that plan?

- A. Ms. Sardeson, my response would be that my understanding, and certainly I am not a lawyer, but my understanding was that that would have been possible if we [43] jointly worked on developing precincts, but that once the Police Jury established their lines, then we were obliged to operate within the precinct lines so established by their rules.
- Q. So it is your understanding that the Police Jury can't split precincts?
- A. Well, I have—I have two feelings on that. One, we operated under the premise that only they could—had the authority to split precincts. Since that time, you know, I have had information from several sources that perhaps the state law prohibiting the violation of precinct lines also applies to the Police Jury.

But at the time that we were negotiating or considering all plans, it was my understanding that the Police Jury was the only body that had the authority to violate precinct lines, yes, ma'am, or to redraw. Did I—am I answering your question?

Q. Was it your understanding—are you saying that it was your understanding during the time leading up to the School Board adopting the Police Jury plan that it was not possible for the School Board to go to the Police Jury and request that the Police Jury reconfigure its precinct plan?

A. Well, I personally did not know that that was an option until after our plan had been denied by the Justice Department.

[44]

- Q. But you know that that is an option today?
- A. That?
- Q. Do you know that the option of going to the Police Jury to request that they reconfigure their precinct lines—
- A. Yes.
- Q. —was an option at that time? You understand that today?
- A. Yes, ma'am.
- Q. Okay. Now you also stated in your direct testimony that the Police Jury plan, in your opinion, was not the favored plan of the School Board at the time that the Police Jury first adopted it and it was first presented to the School Board?
- A. Restate, please?
- Q. You stated in your direct testimony that the School Board didn't automatically favor the Police Jury plan when it was first presented to the School Board?
- A. That is correct.
- Q. In fact you, yourself, didn't immediately favor that plan, did you?

- A. No. I was hoping that we could derive our own plan.
- Q. And did that hope include a twelve member board?
- A. My personal opinion is that I would have liked to have seen our board reduced to nine, seven or five districts, but that was not the feeling of the majority of the board.

[47]

- Q. In fact there was no discussion about the NAACP plan after Mr. Joiner said that it split precincts, isn't that true?
- A. From my viewpoint, yes, ma'am.
- Q. You also stated in your direct testimony that after the Justice Department denied preclearance to the School Board's redistricting plan, we were further told that we were not permitted to gerrymander for racial purposes, is that correct?

[48]

- A. Restate, please?
- Q. You stated in your direct testimony that after the Justice Department denied preclearance to the School Board's redistricting plan, and I quote from your direct testimony, we were further told that we were not permitted to gerrymander for racial purposes?

- A. Well, if you are reading, then I assume that I said that. I believe that what I intended to convey is, again, violating of existing precinct lines by state law to gerrymander any district, whether it be for majority or minority purposes.
- Q. Are you making a distinction between the precinct splitting problem and racial gerrymandering? Would you make a distinction between those two definitions?
- A. Based on my knowledge I cannot make a distinction. Gerrymandering, my concept of the word is that it is an illegal use of precinct lines to configure a district that will favor either a majority or a minority situation. I have a hard time distinguishing between the two personally.
- Q. Well, you stated earlier in your direct testimony that Mr. Joiner had told the board that there was a problem that the NAACP split its precincts, is that correct?
- A. That is correct.
- Q. And that you also stated that that was the reason why you—for you, the NAACP plan wasn't an alternative for the [49] School Board to adopt?
- A. The night that it was presented, the president of the board at that time, David Harvey, asked Mr. Joiner to come in, and his response was that the plan was illegal because it violated numerous existing precinct lines that we had no authority to do. I might—may I?

James Bullers was the District Attorney who was acting as our counsel, also made the comment at that

time that he agreed that should we adopt that plan that we would be sued.

BY MS. BRANNAN:

[59]

- Q. Mr. Musgrove, you identified the *Lemon* case as the district school desegregation case a few minutes ago. Isn't it true that you know virtually nothing about the school district's obligations in that on-going school desegregation case?
- A. Yes. That is essentially true. I really had not heard about that case until we were called to Baton Rogue [sic] last year.
- Q. You were called to Baton Rogue [sic] because my client sued the School Board to try to get it to adopt a legal redistricting plan?
- A. Yes, ma'am.
- Q. I would like to go back for a moment to this question of precinct solitting versus racial gerry-mandering. Are you familiar with the old Bossier area of Bossier City in the parish?
- A. In general, yes, ma'am.
- Q. Isn't it true that in that area of Bossier City, if it weren't for the precinct issue, you think that a majority black district could probably be drawn without a [60] gerrymandering issue?

- A. Restate, please?
- Q. Isn't it true that in the old Bossier area of Bossier City, even if it weren't for the precinct issue, you think that a majority black district could be drawn without a gerrymandering issue?
- A. If it weren't for the precinct issue?
- Q. That is right?
- A. Though I am not a demographer, I am aware that that area houses the most significant concentration of minority population, and as a lay person common sense would tell me that that would be as close a potential black majority district as could be constructed.

\* \* \* \* \*

Testimony of Appellee's witness Thomas D. Myrick— Cross Examination by the Appellants

BY MS. SARDESON:

[73]

- Q. You also said in your direct that there were two schools actually physically located in your district?
- A. Yes.
- Q. And that—both of those schools are up in Plain Dealing, are they not?
- A. Yes. Plain Dealing Elementary School, and then Plain Dealing Middle School and High School are in one location.
- Q. And both of those schools are predominantly black, are they not?
- A. Yes.
- Q. And in fact both of those schools are over 75 percent black?
- A. I couldn't answer that. I do know that they are predominantly black.
- Q. Again, it has been stipulated in this case that Plain Dealing Elementary is 77.7 percent black, and Plain Dealing [74] Junior and Senior High is 76.9 percent black.

A. I would not disagree with that.

[78]

Q. But isn't it true, Mr. Myrick, that you actually participated in the Police Jury process?

A. No, absolutely not. I had nothing whatsoever to do with it.

Q. That, in fact, you met with Mr. Joiner, the Police Jury's demographer, in his office on five or more occasions during the Police Jury process?

A. I did not.

THE COURT:

Where was his office?

MS. SARDESON:

In Shreveport.

THE COURT:

I asked-I didn't ask you.

MS. SARDESON:

I am sorry.

THE COURT:

Where was his office?

THE WITNESS:

I do not know where his office is.

I have never-

THE COURT: port, Louisiana? Have you ever been in Shreve-

[79]

THE WITNESS:

Yes, sir.

THE COURT: Have you ever been in his office?

THE WITNESS: No, sir.

THE COURT: Are you sure about that?

THE WITNESS: Absolutely.

[86]

BY MS. SARDESON:

Q. Mr. Myrick, you stated in your direct testimony that it was likely you who proposed, shortly after the Department of Justice precleared the Police Jury plan, proposed to the School Board that they adopt the Police Jury plan?

A. Yes.

Q. Just go ahead and-

A. It probably was. I know that I favored it. I don't recall specifically making the motion, but that was my position.

Q. And the reason for your position, was it not, that you were afraid that the members of the School Board were going to become embroiled in a political controversy over the fact that incumbents were pitted against each other?

A. My position was that this plan had been approved by the [87] department—or had been not objected to by the Department of Justice. It seemed expedient to say that if this plan is acceptable, then why don't we accept it rather than become involved in discussions about minute changes in district lines.

It seemed a good way to say, we don't have anything else to worry about. This plan has been accepted, and we had no objection to it. And I will add, also, that a part of my thinking in the process was that it was more reasonable for the public to understand the district based on it being the same as the Police Jury.

In the past, prior to 1980 as I recall, the—both plans were the same, and the district designation was the same. Between 1980 and 1990 there was much confusion about which Police Jury district you lived in and what School Board, among the voters is what I am saying.

[95]

THE COURT: Sir, let me ask you this. You had this meeting with Mr. Joiner before the board, is that right?

THE WITNESS: Yes, sir.

THE COURT: And he showed you several different plans, or more than one, is that correct?

[96]

THE WITNESS: As I recall, sir, I think that it is.

THE COURT: Did any of those other plans cross precinct lines?

THE WITNESS: No, sir, I don't think so.

THE COURT: Did they vary from the Police Jury plan?

THE WITNESS: I am not certain about that. He showed us, Your Honor, that the districts—Mr. Joiner showed me what—the various things that could happen to my district. I did not look at the entire parish, the various other districts. He was showing --

THE COURT: Each member?

THE WITNESS: Yes, sir.

THE COURT: Each member their parish [sic], and that was all that they were interested in?

THE WITNESS: In a sense, yes, sir. That was the primary concern.

THE COURT: Whether you could get reelected from your parish?

THE WITNESS: Whether it would affect my district and how.

THE COURT: That sounds like a member of Congress.

THE WITNESS: Yes, sir.

THE COURT: And you say that you don't recall whether that was at variance with the Police Jury plan, your [97] district boundaries?

THE WITNESS: Your Honor, they—to be very candid about it, I was impressed with Mr. Joiner's

ability to draw these maps with his computer. I had never seen that done before.

THE COURT: That isn't what I asked you, is it?

THE WITNESS: He showed—well, he had told us all along that he could not cross precincts. I think that perhaps he showed us some of the proposed other plans that did cross precincts.

THE COURT: All right. Supposing that they didn't cross precinct lines. Did it change the boundaries of your district?

THE WITNESS: Yes, sir.

THE COURT: And that was contrary to the Police Jury plan, was it not?

THE WITNESS: He showed other-

THE COURT: Just answer my question, and then you can explain.

THE WITNESS: Yes, sir.

THE COURT: And that would then have been contrary to Louisiana state law, in the view of your counsel at least?

THE WITNESS: No, sir. He did not show me a plan that crossed state-I mean precinct lines as a proposal for my district.

\* \* \* \* \*

BY MS. SARDESON:

[105]

- Q. Isn't it true that Mr. Price then brought his plan back before the board at the next School Board meeting on September 17th, 1992, do you recall that, the two presentations?
- A. I think that that is correct.
- Q. And isn't it also true that the School Board just dismissed the plan because of split precincts?
- A. We chose to go with the Police Jury plan because it had [106] been approved by the Department of Justice.
- Q. But it would be a fair statement, wouldn't it, in light of the comment that you just made, that you didn't even take—give the plan enough thought to find out where your own residence would be in that plan, that the School Board just summarily dismissed the NAACP plan when Mr. Price presented it?
- A. I cannot speak for the whole board, but I did not summarily dismiss it.
- Q. But the School Board didn't ask Mr. Joiner to conduct any further study on the plan after Mr. Price presented it, did they?
- A. Mr. Joiner told us that the proposed NAACP plan split precincts. In fact he gave us a number, that I can't recall now, but it was a pretty high number.

THE COURT: Did anybody present to you during this period a plan whereby minorities would be in the majority of any election district without cutting precinct lines?

THE WITNESS: No, sir.

THE COURT: Nobody?

THE WITNESS: No, sir.

THE COURT: Including the NAACP or any other

minority group?

THE WITNESS: No, sir.

THE COURT: Are you sure about that?

[107]

THE WITNESS: That is my understanding.

[109]

THE COURT: Was Mr. Price a part of the redistricting process of the School Board of which you are a member?

THE WITNESS: He contributed on a number of occasions and provided a proposed plan.

THE COURT: Did they cut across precinct lines?

THE WITNESS: Yes.

THE COURT: What was the reason that they were rejected?

THE WITNESS: That was one of the reasons, Your Honor.

THE COURT: What were the other reasons?

THE WITNESS: The other reason, in my opinion, was that the district was configured in a real odd way, beginning at the Arkansas state line, and extending on down through the middle of the parish, and it created a School Board district that was not in accord with the previous practices.

Our—our procedure has always been for a School Board member to represent a certain area, and the districts that Mr. Price proposed flashed down through the middle of the parish and created a situation where a School Board member in Bossier City or the southern part of the parish would be representing people who attended a school and [110] resided in the northern part of the parish.

It would distance the voting public in a particular school attendance district from their School Board member, and that was my personal objection to it. And then we were informed that that plan could not be created with a black majority district without crossing precinct lines.

BY MS. SARDESON:

[114]

- Q. And Mr. Price addressed the precinct split issue in the NAACP plan at the public hearing, did he not?
- A. I have heard him address it, and I am not certain that it was at that particular time.
- Q. In fact Mr. Price talked about the supremacy clause in his presentation, did he not?
- I don't think that he used that term.
- Q. Isn't it a fact, Mr. Myrick, that Mr. Price told the board that Mr. Joiner, the School Board's own demographer, had had conversations with the NAACP, and that Mr. Joiner had admitted that the use of the precinct law—the state—the Louisiana precinct law, if it impeded the creation of a black majority district, that that would constitution—constitute a violation of the Voting Rights Act, a constitution [sic] of federal law?
- A. I don't recall that. I recall Mr. Price's statement to the effect that federal law supersedes the state law.

BY MS. BRANNAN:

[127]

Q. Mr. Myrick, I put back up what was marked as United States exhibit number 76-D, which is the proposed School Board plan, which is the current Police Jury plan?

- A. Yes, it appears to be.
- Q. Which district does Tommy Scarborough represent?
- A. The blue one.
- Q. That is the same as the one that you would be in if the court approves this plan for the School Board—
- A. Yes.
- Q. —is that correct?
- A. Correct.
- Q. And which district is Rick Avery in?
- A. I couldn't tell you. I have no idea. I can-
- Q. I am sorry, go ahead.
- A. I think that I know—I couldn't answer that. I thought that I could tell you where he lived, but I don't I am not certain of that.
- Q. Mr. Myrick, would it help you to remember the conversations that Ms. Sardeson was asking you about with Mr. Joiner during the Police Jury process in which she asked if you were involved, if I were to suggest to you that Rick Avery and Tommy Scarborough were involved some of those conversations as well?

# A. With me?

[128]

Q. And with Mr. Joiner during the Police Jury redistricting process?

- A. No.
- Q. Would it help-
- A. That is not true.
- Q. Does it help you recall those conversations if I suggested that in paragraph eight-five of the stipulations that your counsel has stipulated that on those occasions you were accompanied by at least two Police Jury members, Rick Avery and Tommy Scarborough, all of whom represent districts, portions of which could be used to create a black majority district north of Bossier City?
- A. I never met with a member of the Police Jury. I never discussed the plan with them. I have never met with Mr. Joiner outside a School Board meeting to discuss this reapportionment plan.

\* \* \* \* \*

Testimony of Appellee's witness Gary D. Joiner—Cross Examination by the Appellants

BY MR. MULROY:

[135]

Q. And you incorporate that input from your employers when you are drawing the plan, isn't that correct?

A. Yes.

Q. You don't inject your own personal preferences into the plan, do you?

A. No.

Q. So when you are drawing a redistricting plan, you follow the instructions of the government officials who employ you, [136] that is fairly stated, correct?

A. Yes. Unless—occasionally something happens when an elected official will ask me to do something that is just totally improper, and it happens rarely, but it does happen occasionally.

Q. And you advise them of all of the relevant state law requirements?

A. Yes.

Q. And you also advise them of all relevant options for redistricting under state law, isn't that correct?

A. Yes.

Q. Now, you had these meetings with small groups of individual incumbents during the Bossier Parish Police Jury redistricting process in 1991, correct?

#### A. Yes.

- Q. And it has been stipulated to by the parties in this case that these meetings were not open to the public. Now let me ask you this question about these meetings. School Board member Thomas Myrick, one of the plaintiffs in this case, attended some of these meetings, did he not, during the Police Jury process?
- A. Listening to testimony if I could I would like to explain what I remember.

THE COURT:

Answer the question.

THE WITNESS: I met with certain School Board [137] members, talked to them. Most of the Police Jury members came to my office, two or three at a time.

### BY MR. MULROY:

- Q. And Thomas Myrick -
- A. I met with Mr. Myrick, and I thought that it was at my office. It may not be. I am not I am not really sure about that, at my office.
- Q. He met with you during the Police Jury redistricting process, correct?
- A. I met Mr. Myrick.
- Q. And discussed redistricting during the Police Jury redistricting process, isn't that correct?

A. But not in the School Board process, the Police Jury process for the Police Jury, and there is a difference.

THE COURT: There is?

THE WITNESS: Yes, sir.

THE COURT: Oh, might be.

BY MR. MULROY:

Q. So your testimony then, if I can understand it correctly -

A. Can I expand on that?

THE COURT: No. Answer questions.

BY MR. MULROY:

Q. Your testimony then is that School Board member Thomas Myrick met with you during the Police Jury redistricting [138] process to discuss the redistricting for Bossier Parish, is that fairly stated?

A. For the Police Jury, and he was certainly aware of it. Yes, I would say yes to that.

Q. Now, you did testify at deposition, did you not, that he met with you some five times in your office, did you not?

A. I don't recall. I certainly met with Mr. Myrick at various times, and other School Board members. I don't recall saying in my office. Maybe I did. I don't – of course I had almost twenty hours of deposition, too. I may have.

Q. Well, you did take a deposition in this case, is that correct, Mr. Joiner?

A. Yes, sir.

THE COURT: Just a minute, counsel. Witnesses don't take depositions. Witnesses submit to depositions.

MR. MULROY: I stand corrected.

THE COURT: Now let me show you how to do it. Bring it up here.

MR. MULROY: Bring the deposition transcript?

THE COURT: Yes.

MR. MULROY: Thank you, Your Honor.

THE COURT: Do you recall your deposition being taken on October 14, 1994?

THE WITNESS: Yes, sir.

[139]

THE COURT: In this case, by Mr. Gary Joiner?

THE WITNESS: Yes, sir.

THE COURT: And you were under oath at that time, were you not?

THE WITNESS: Yes, sir.

THE COURT: And that was in the case of

Bossier-

MR. MULROY: Bossier, Your Honor.

THE COURT: Bossier Parish School Board versus Jane [sic] Reno and others in this case, right?

THE WITNESS: Yes, sir.

THE COURT: Now at any time following the redistricting process for the Police Jury, did you have any discussions with any other member—any member of the School Board?

THE WITNESS: Yes, Sir.

THE COURT: With whom did you have such discussions?

THE WITNESS: When I went before the School Board, I certainly discussed that with every member of the School Board. I recall having conversations with both Mr. Myrick and with Mr. Musgrove, and with the staff of the School Board.

THE COURT: Is it your testimony today that Mr. Myrick did not come to your office?

THE WITNESS: No, sir, it is not.

[140]

THE COURT: What is your testimony? Did he come to your office or didn't he?

THE WITNESS: I believe that he did. I certainly do. I couldn't tell you the dates, Your Honor. I am not sure about that.

THE COURT: The question that you discussed with Mr. Myrick in your office was the district boundaries that had already been created for election of the School Board before there was a vote, isn't that right?

THE WITNESS: I don't recall that, Your Honor. For the School Board?

THE COURT: For the Police Jury?

THE WITNESS: For the Police Jury. That would have made sense, yes.

THE COURT: Do you recall how many meetings that you had with Mr. Myrick?

THE WITNESS: No, sir, not offhand, but I would assume that over the course of the project probably half a dozen.

THE COURT: Ten?

THE WITNESS: It could be. I really didn't keep records of who I spoke with on any- at any given time.

THE COURT: All right. Did you have occasion to call him and seek him out?

THE WITNESS: I do not recall calling him. I [141] typically work through staff.

THE COURT: Did he ever have occasion to call or contact you directly?

THE WITNESS: Yes, sir. I believe that he did on at least one occasion. Yes. I will answer that yes.

THE COURT: When he came to see you was he concerned about his own district alone?

THE WITNESS: I would say that I have never been in a meeting with an incumbent when they were not concerned about at least where their boundaries were. And I would say that that would extend to Mr. Myrick.

THE COURT: He was concerned about his own district?

THE WITNESS: I would say so, yes. Whether he said that verbally or not, I don't know.

THE COURT: And he came to see you what the jury - the Police Jury plan would look like in terms of its boundaries?

THE WITNESS: I would say so, yes.

THE COURT: And he left you with the impression that the Police Jury plan would ultimately be the School Board plan, right?

THE WITNESS: Yes, sir.

THE COURT: Did you have any occasion to discuss with Mr. Myrick, or Mr. Jerome Darby, the Police Jury plan?

[142]

THE WITNESS: Yes, sir. I certainly spoke to Mr. Jerome Darby about it on several occasions.

THE COURT: Did either of them ever have anygive you any indication that they wanted a black majority district? THE WITNESS: No, sir.

THE COURT: As a matter of fact they indicated just to the contrary, didn't they?

THE WITNESS: Yes, sir. In the context -

THE COURT: You answered my question.

THE WITNESS: Okay.

THE COURT: On how many occasions did you talk with Mr. Darby?

THE WITNESS: Several. I don't remember how many, but several. Both in meetings, before and after meetings, at my office. And by telephone.

THE COURT: Now wait a minute, sir. Did you have any individual conversations with members of the Police Jury about the drawing of black majority districts?

THE WITNESS: Individual conversations?

THE COURT: No. Any conversations with individual members of the Police Jury about drawing black majority districts?

THE WITNESS: Not that I recall.

THE COURT: All right, counsel. You can have this [143] back.

MR. MULROY: Thank you, Judge.

BY MR. MULROY:

- Q. If I may just quickly follow up on one point that you just made, Mr. Joiner, as Judge Richey was questioning you. Police Juror Jerome Darby during the Police Jury redistricting process is a black Police Juror, is that correct?
- A. Yes, he is.
- Q. Mr. Darby didn't affirmatively tell you that he opposed the creation of a black majority district during the process, did he?
- A. Oh, no.
- Q. In fact he did ask about the possibility of creating a black majority district, did he not?
- A. It was more involved than that.
- Q. But the answer would be yes, he did ask about the possibility of creating a black majority district, is that correct?
- A. Yes. The answer to that would be yes.

[149]

THE COURT: I asked you, what was the highest percentage of African Americans in a proposed district that you generated on your computer when considering alternatives for elections to the School Board?

THE WITNESS: In a complete plan it was probably not over thirty percent, thirty or forty percent.

THE COURT: How about Police Jury?

THE WITNESS: The same. I doubt that it was that high.

THE COURT: Would it be higher in the School Board? They are the same, aren't they?

THE WITNESS: Yes, they are. It would be the same.

THE COURT: Okay. So you got up to thirty or forty percent?

THE WITNESS: Maybe.

THE COURT: Well, maybe. Do you know? You did it, didn't you?

THE WITNESS: Yes, sir, but it has been a long time, and those plans were destroyed in a computer catastrophe in my office.

THE COURT: Well, did you give them—what program did you use? Autocad, or Word Perfect, or Microsoft Word, or what?

[150]

THE WITNESS: No. I used Geodistrict from Geographic Data Technology, and GIS Plus from Caliber Corporation, and the problem was that I was backing it up, so my back up was blown away when my—

THE COURT: Your back up was what?

THE WITNESS: My back up sort of self destructed.

THE COURT: Was it on tape or diskette?

THE WITNESS: Yes, sir, it was on tape.

THE COURT: What about the hard drive?

THE WITNESS: It went down, too. We had a power failure at the worse possible moment.

[151]

MR. MULROY: And just for the purposes of clarification, Judge, the United States does not dispute that it is impossible to draw two black majority districts to actually --

THE COURT: Impossible did you say? You don't want to dispute the fact that it is impossible to draw two black [152] majority districts.

MR. MULROY: Without splitting at least a single precinct. We do not dispute that in order to go from the forty-five percent range up over to the fifty percent range for the two districts that it might be necessary to split a single precinct. It is our contention that there are ways for School Boards in Louisiana, including this School Board, to handle that situation, and that—

THE COURT: Without—by means of splitting just—not more than one precinct, is that right?

MR. MULROY: No. Actually Judge it is our-

THE COURT: How many precincts are going to have to be, quote, split, unquote?

MR. MULROY: To get one black majority district in the City of Bossier, fourteen.

THE COURT: All right. How many to get two?

MR. MULROY: Twenty-seven.

THE COURT: All right. Do you agree with that?

THE WITNESS: Yes, sir.

THE COURT: Are you the source of that information?

THE WITNESS: No, sir. They had someone else do it, but I verified it.

THE COURT: And you verified it on your computer?

THE WITNESS: Yes, sir.

THE COURT: Even though it crashed you still [153] remember?

THE WITNESS: That is after that.

BY MR. MULROY:

[155]

Q. Would you agree with the statement that any plan at all, whether black majority districts or not, which

any significant way deviated from the Police Jury plan, would inevitably split at least one precinct somewhere?

A. I haven't done a test to test all of them. I don't think—I don't think that you—I know that you could not have another plan that was as strong as this one without splitting precincts.

[156]

- Q. How long would it have taken you to figure out whether any other alternative, which is significantly different from the Police Jury plan, in any way, black majority or otherwise, was possible without splitting precincts?
- A. Several hours at least.
- Q. Several hours?
- A. At least.
- Q. All right. Now, when the School Board—strike that.

When the School Board began its redistricting process, it didn't consider it a foregone conclusion from the git-go that it would adopt the Police Jury plan during its 1992 process, is that correct?

- A. That is correct, they did not.
- Q. In fact it actively considered the idea of going with another plan, correct?
- A. Yes.

- Q. Indeed when the School Board first hired you in May of 1991, didn't you estimate that your redistricting work would take 200 to 250 hours?
- A. If they wished to pursue another course, yes.
- Q. Doesn't it necessarily follow that from the start the School Board was at least considering the idea of adopting a plan which split at least some precincts?
- A. No.
- Q. Now, as one of the reasons that the School Board has [157] given in this case for adopting the Police Jury plan over alternatives which provide black majority districts, the School Board stated that it had no authority to change precincts, is that correct?
- A. Would you repeat that, please?
- Q. Sure. When the School Board gave a reason for not adopting—for adopting the Police Jury plan over alternatives which provided minority districts, one of the reasons that it gave was that it had no authority to change precincts, is that correct?
- A. Yes. Under Louisiana statute seventeen seventyone three E two B, I think.
- Q. And for that reason it did not give consideration to the NAACP plan as a viable plan, is that correct?
- A. That is correct.
- Q. But it has been stipulated to in this case that it is quite common for parish School Boards in Louisiana to draw a redistricting plan different from respective Police Jury redistricting plan.

In fact, isn't it true that you testified at deposition that out of the nine plans that you have worked—nine parishes in which you have worked in which the School Board and the Police Jury had the same number of districts, five had different plans?

A. Yes, that is correct.

[165]

- Q. Let me ask you this question. It was your practice to fully inform your clients, including the School Board, about all options that they would have, including options regarding the changing of precinct lines, is that correct?
- A. Yes.
- Q. And that would include-strike that.

Louisiana law provided, did it not, that after January 1st, 1993, precinct consolidations, putting them together, could be made, reducing the number of precincts in the parish parish-wide, and quote, substantially, unquote, reducing election costs, is that a fair statement?

- A. That is true. As a matter of fact, I am currently engaged in a project with the Police Jury to consolidate precincts.
- Q. But they haven't finished consolidating precincts yet, have they?
- A. No, they have not.

- Q. And it has been what, four years since the Police Jury originally passed this plan?
- A. There was a moratorium on precinct—on changing any precinct lines in the State of Louisiana for approximately two years. January 1st, 1994, they can change them, and it will go on until just before the next Census.

[166]

- Q. Didn't you just testify that after January 1st, 1993, precinct consolidations could be made?
- A. It could be 1993. There was a moratorium for about two years.
- Q. So it has been two years, and the Police Jury still hasn't bothered to consolidate these precincts, is that right?
- A. It is totally up to the Police Jury.
- Q. If election costs were really a big concern on this precinct issue, it would be in the Police Jury's and the School Board's interest to reconsolidate precincts as fast as possible, right?
- A. Part of the problem—yes. Part of the problem is this procedure.
- Q. You answered my question, yes. Do you need to explain your answer, or is it yes?
- A. I would like to. I would say yes, and I would also like to explain.
- Q. So in order to answer the question whether or not it would be in the Police Jury's and School Board's

interests to reconsolidate as soon as possible, yes is not sufficient, you would need to explain that?

- A. I would like to.
- Q. Please.
- A. Certainly it is in their best interest, because it [167] reduces the cost of elections. The average costs of elections per precinct in the State of Louisiana is between \$850 and \$900. According to the Commissioner of Elections Office.

If the Police Jury in Bossier Parish goes ahead and consolidates precincts as they are now, and this case is still pending, then it would be a wash. It would be a useless waste of public money.

- Q. Well, since you raised this figure of how much election costs are per precinct, let me ask you a question about that. School Board elections in Bossier Parish are usually held in the fall of even numbered years, correct?
- A. Okay. I will go along with that.
- Q. And that is when congressional elections are held, correct?
- A. Yes.
- Q. You testified that election costs are about \$800 per precinct for elections, is that correct?
- A. That is what the State of Louisiana told me.
- Q. But you did not communicate—strike that.

Isn't it true that that figure includes the costs that are borne by the State of Louisiana?

A. Yes. If the State of Louisiana participates in the election. Now it is possible that the School Board elections may be held at a different time.

[168]

Q. If the School Board elections—the School Board elections would normally be held at the same time as congressional elections, we just agreed to that, is that correct?

### A. Yes.

- Q. Now, isn't it true that under Louisiana law that at least half of the cost of such elections are borne by the State of Louisiana?
- A. It depends entirely on the number of races being held. There is a formula, and I am not aware of the formula. I cannot recite the formula, but yes, you are right, they do get state assistance. There is currently a bill on [sic] the Louisiana state legislature that may prohibit a certain amount of that if it passes.

MR. MULROY: Judge, at this time I would like to ask the court to take judicial notice of certain Louisiana statutes regarding election expenses, and just what the formula is that Mr. Joiner is referring to. For the purposes of notifying counsel, opposing counsel, I am refer [sic] to Title 18, Sections 14.1(a)—1400.1(a), 1400.2(a), and 1400.3 (a), and without belaboring the point further, I would simply like to ask permission to approach to give this statute to the Clerk.

THE COURT:

Without objection you may do so.

MR. MULROY:

Thank you, Judge.

[169]

MR. THORNTON: Do you have a copy for me? I didn't bring my entire statute.

THE COURT:

You can get it up in the library.

MR. THORNTON:

Louisiana statutes?

THE COURT:

Sure.

MR. MULROY:

I would be happy to do that, Mr.

Thornton.

THE COURT:

We have every state code in the

country here.

## BY MR. MULROY:

Q. You said before that you could have a single, just a single black majority district inside Bossier City by creating only fourteen new precincts, right?

A. Yes.

Q. And it would also be the case that in such a case the precincts would be all within Bossier City, primarily along the river, isn't that what you testified to?

A. I believe that that is correct.

Q. Isn't it also true that one polling place can be used for two different precincts in Louisiana?

A. Yes.

- Q. And that is such a case Louisiana law allows the parish to reduce the number of polling place officials to as low as two commissioners per precinct?
- A. It is up entirely to the Commissioner of Elections [170] Office.
- Q. Isn't it actually up to the parish—

THE COURT: He is probably a friend of Governor Edwards.

THE WITNESS: Soon not to be Governor Edwards.

### BY MR. MULROY:

Q. Isn't it actually up to the Parish Election Board?

A. They can—the Registrar of Voters and the Clerk of Court maintain most of that information. I am not either one of those, so I would rather not testify to that.

MR. MULROY: Judge, at this time I would like to ask the court to take judicial notice of some other Louisiana statutes that describe this issue and establish that in such a case—first of all, you can consolidate polling places across precincts, and that in such a case you can reduce the number of polling place officials to as low as two commissioners per precinct.

THE COURT: Very well.

MR. MULROY: The statute—

THE COURT: Without objection it will be received.

MR. MULROY: Thank you.

THE COURT: Next?

#### BY MR. MULROY:

Q. These measures that I am talking about would reduce election costs, would they not?

# [171]

- A. If they were implemented, yes. However, just because you combine two polling places in one precinct does not mean, arbitrarily, that you reduce total costs, because you are probably going to have a machine for each precinct. So you would have machine costs, too.
- Q. Did the School Board direct you, prior to October 1st, 1992, to do a comprehensive study of these issues to see just how much election costs could be reduced?
- A. No. Because it varies, and no, they did not.
- Q. Now, isn't it further true that you can implement precinct splits by using additional voting machines, or by using lockouts on voting machines?
- A. You can use lockouts, but it depends on the quality and age of the machine.
- Q. Now as to the use of these additional voting machines or lockouts, these are measures which need only be taken when there is a School Board election under this scenario, correct?
- A. In the simplest terms, yes.
- Q. And assuming that School Board elections are held once every four years, there are going to be at

most two more elections between now and the next redistricting, isn't that fairly stated?

A. Yes.

\* \* \* \* \*

Excerpts from Volume II of Trial Transcript in Bossier Parish School Board v. Reno, C.A. No. 94-1495 (D.D.C.), April 11, 1995

Testimony of Appellee's witness William T. Lewis— Cross Examination by the Appellants

BY MS. BRANNAN

[8]

Q. How many regular high schools are there in Bossier Parish?

A. Six.

Q. And one of them, Plain Dealing Senior High School is seventy-nine percent black according to that report?

A. Close.

Q. So by drawing six attendance areas and maintaining those in the school district, you come up with a school that is seventy-nine percent black?

A. Correct.

Q. And that high school is up here in Plain Dealing in Mr. Myrick's district?

A. Correct.

Q. How many regular elementary schools are there in Bossier Parish?

A. There are sixteen.

- Q. And there are also attendance areas for elementary schools?
- A. That is right.
- Q. And four of those school are predominantly black aren't they, Mr. Lewis?
- A. Correct.
- [9]
- Q. And those are Bossier and Butler Elementary?
- A. Right.
- Q. And those are down in the City of Bossier?
- A. Correct.
- Q. Which is down in this area which is marked with the district seven and eight area on U.S. exhibit 76 D?
- A. Correct.
- Q. And Plain Dealing Elementary also is predominantly black?
- A. Correct.
- Q. And that is back up here in Plain Dealing in Mr. Myrick's district?
- A. Right.
- Q. And Plantation Park Elementary is also predominantly black, is it not?

- A. I am not going to say offhand that it is, but it is close.
- Q. All right. So by drawing sixteen attendance areas and maintaining those for elementary schools, you come up with three or four that are predominantly black?
- A. Yes.
- Q. And the reason for that is it not, Mr. Lewis, that when you—when you divide these areas, it is the composition of the neighborhood or community that dictates the racial composition of the school in your view?

[10]

- A. We believe in the neighborhood school system.
- Q. All right. Now the assignment of faculty and staff to schools is in your control, is it not, or that of the school district?
- A. That is correct.
- Q. It doesn't depend on where they live, or their neighborhoods?
- A. No.
- Q. And after that report that you signed and made to the court, your full-time teaching staff, including principals and assistant principals, was just under ten percent African American?
- A. That is correct.

- Q. And by the way, can I call these teachers as a form of short reference, which I believe is the practice that you follow in that report?
- A. Correct.
- Q. Let's talk for a moment about the assignment of teachers to those majority black schools that we identified a few minutes ago. Plain Dealing Middle and Senior High School at that time had sixteen white teachers and twelve black teachers, which made the teaching staff there over forty percent black?
- A. Right.
- Q. And that is more than four times the district-wide [11] average?
- A. Correct.
- Q. And Bossier Elementary had six white and five black teachers, which made that composition about sixteen percent black?
- A. Close.
- Q. And Butler Elementary had four white teachers and ten black teachers, which made that composition over seventy percent black?
- A. Correct.
- Q. And that is seven times the district average?
- A. I agree with you. I mean I am not disagreeing with what you are saying. That is probably true.

- Q. Well, you are welcome to reference the report if you have any doubt about my numbers, Mr. Lewis. You believe—this is not an accident is it, Mr. Lewis?
- A. No.
- Q. These are deliberate—these proportions are deliberatively assigned by the Bossier Parish school district?
- A. Between the school and the principal—between the district and the principals, yes.
- Q. And isn't it true, Mr. Lewis, that at your deposition that one of the reasons that you gave for putting black teachers together in concentrations in schools over their representation generally on your staff is that—

[12]

MS. BRANNAN: And I quote, Mr. Thornton, from page seventy-eight of the deposition.

# BY MS. BRANNAN:

- Q. —that black teachers sometimes feel uncomfortable when there are not many other black teachers at a school with them, and they feel more comfortable when there are others, isn't that correct?
- A. That is not the primary reason. That is a reason, but that is not the primary reason.
- Q. And you believe that the primary reason that you think that the black community wants role models in the form of black teachers—

- A. That is correct.
- Q. —in their schools.
- They have expressed that to us many times.
- Q. And so you deliberately respond to that request of the black community by disproportionately assigning black teachers to black schools?
- A. That is correct.
- Q. Mr. Lewis, isn't it true that an early order of the court in the *Lemon* case required the Bossier District to maintain a Biracial Committee?
- A. Yes.
- Q. And it was to be comprised of black and white community members?

[13]

- A. Yes.
- Q. And to recommend to the School Board ways to achieve and maintain a unitary status and improve education?
- A. I don't know that that was the original intent, but I am assuming that it was, to make sure that we did maintain the proper rules and regulations.
- Q. That committee stopped meeting in 1976, didn't it?
- A. Correct.

\* \* \* \* \*

\* \* \* \* \*

- Q. Isn't it true, Mr. Lewis, that in this document that you [16] submitted to the court in the spring of 1994, under section 9-A there you reported, and I quote, the Bossier Parish School Board does have a Parish Biracial Committee available?
- A. That is correct.
- Q. And that wasn't true, was it?
- A. Well, it just wasn't active. It doesn't mean that it was disbanded. It just wasn't active.
- Q. Well, it hadn't met since 1976 except for the few short meetings that we just discussed in early 1993, isn't that true?
- A. That is correct.

. . . . .

Testimony of Appellee's witness William T. Lewis—Redirect Examination by the Appellee

BY MR. THORNTON:

Q. The court asked you, Mr. Lewis, about attendance zones. When you draw—

THE COURT: Now you are interjecting a new term of art.

MR. THORNTON: Attendance lines.

THE COURT: Whatever.

BY MR. THORNTON:

[22]

Q. When you draw attendance lines, do you also give those to the federal courts?

A. Yes, sir.

Q. All right, sir. That is a part of the obligation, and that is done?

A. Yes, sir.

Q. Have you had anybody complained about [sic] those lines?

A. No, sir.

Q. As a matter of fact, in the Lemon suit that you were asked about, Mr. Lewis, have you been sued, or

had motions or petitions filed against the Bossier Parish School Board over the last ten, twelve or fifteen years?

- A. No, sir.
- Q. Now, you were asked about the black teachers, and you said that somebody had suggested that black teachers out to be assigned to black schools to serve as role models for the young students, is that correct?
- A. That is correct.
- Q. Who has asked you to do that?
- A. Mr. Price and other groups of the black community. They felt like, and I feel the same way, that black kids need good black role models. And the people in Plain Dealing, for example, would go crazy if we took all of their black teachers out of that school and spread them out throughout the parish, because the school is majority black.

[23]

- Q. So you were doing this because someone in the black community was saying that that is what the black community would like for you to do?
- A. Yes, sir.
- Q. All right. Now the court asked you a question about some of the schools that are very predominantly black. It didn't ask you the question that I would like to ask you. Is it not a fact that there are some private schools that opened up in some of those areas?
- A. Yes, sir.

- Q. And that the private schools are predominantly if not all white?
- A. Yes, sir.
- Q. Is there anything under the law that you can do about that?
- A. No, sir.
- Q. Now, you have tried to recruit black teachers, have you not.
- A. Yes, sir.
- Q. Would you tell the court, if it is true, that you have tried harder to recruit black teachers than white teachers?
- A. That is correct we have.

THE COURT: Why?

THE WITNESS: Why? Because we need black teachers in our school system. We need good black role models for our [24] black kids. They need someone to look up to.

I was personnel director for Bossier Parish for six years, from 1980 to 1984. When I would go to the colleges and universities throughout Louisiana, Texas, Mississippi and Arkansas, you would find 120 to 130 teachers graduating every year. A large number of those people being black. Today you go to them, you don't find many people in education any more. They are just not going into it.

The black—the young black people have greater opportunities in other places rather than teaching now, and our salary scale in Bossier Parish—we are actually a bedroom community for Shreveport. Most of the people work in Shreveport, and a lot of them live over there, but they have a tax basis quite a bit greater than ours. Therefore, they pay anywhere from three to \$5,000 a year more than what we can.

We can't hang on to our good black teachers in our parish, because they will go over to where they can make the most money. You can't blame a kid coming out of college for wanting to go where the money is. Their start—the difference between our pay and what they make is more than what I made when I started for a year.

So there is quite a bit of difference in today's society. Money is the key to a young person as far as their goals are concerned. And so they are going to go to a school

[25] system where they can make more money than they will teaching in Bossier Parish. Although we have got the best school system in the state, they are still going to go where the money is.

THE COURT: What was your pay?

THE WITNESS: When I started teaching?

THE COURT: No, as superintendent?

THE WITNESS: As superintendent, 65,000, and the man across the river makes over 100,000. So there is quite a bit of difference there. Of course they have got more students than we do. They have got about 55,000, we have got about twenty-two. So there is a difference.

I wouldn't swap with him for anything. We have got a better school system than anybody else.

THE COURT: What are the SAT scores?

THE WITNESS: We don't give the SAT. We give the ACT scores, and it ranks nationally with the national results, close to the national results.

#### BY MR. THORNTON:

- Q. Have you ever asked any of the members of the black community in Bossier Parish to help recruit black teachers?
- A. Yes, sir, we have.
- Q. Who? Who have you asked?
- A. We have asked Mr. Price and other people. Mr. and Mrs. Harry have gone before. Mr. and Mrs. Martin. People in the [26] community.

People that used to work for the school system. One of the things, and I kind of resent this, because I have never had a lot of difficulty relating to people when I was in personnel, but they said that a white person could not recruit a black teacher to a school system.

Well, in order to try to help in that light, we have black administrators, or supervisors, or principals, or whatever, and community members, to go along with us to help recruit, and we still do not get the numbers that we would like.

Now, we get four or five black teachers every year, but we have four or five leaving every year to go next door to teach. As a matter of fact, after school started this year, the school system next to us took four of our black teachers from one of our black schools.

I can't do anything about that. It is their choice to leave. And for us to try to get someone to come in then and take their place, they are not there. So it gives us a very difficult problem. I mean it is a terrible situation for us to be in knowing what we want to do and not being able to do it. And we want good role models for our black kids.

. . . . .

Testimony of United States Government's witness Jerome Darby—Cross Examination by Appellee [38]

## BY MR. THORNTON:

- Q. I have just a few questions to ask, if you please. You are a member of the Police Jury of Bossier Parish, are you not?
- A. Yes, sir.
- Q. You first ran for that office in what year?
- A. 1983.
- Q. And was that in a district under the old plan that was in existence from the 1980 to the 1990 census?

[39]

- A. Yes, sir.
- Q. All right, sir. And when you first ran in 1983, did you run from a district that had a majority white population?
- A. Yes, sir.
- Q. Do you remember the composition, racially, of that district?
- A. The composition was about thirty, thirty-seven percent black.
- Q. All right. A little—all right, thirty-seven percent. And in 1983 when you ran for that post, how many opponents did you have, and what were their racial designations?
- A. Excuse me?

Q. Who did you run against?

A. The incumbent who was black, and also a white opponent.

Q. The black opponent was Johnny Gipson, was it not?

A. Yes, sir.

Q. That is G-i-p-s-o-n, isn't it?

A. Yes, sir.

Q. And he had been elected before you to the Police Jury?

A. Yes, sir.

Q. So in that district you took on the incumbent and another white—and a white candidate?

A. Yes, sir.

Q Allright, sir. Did you win that race?

A. Yes, sir.

[40]

Q. Now, was race an issue in that political campaign?

A. Was it an issue?

Q. Yes. Did you make it an issue?

A. No, sir.

Q. Do you know of anybody else who made it an issue?

A. Yes, sir.

Q. Who?

A. My white opponent.

Q. All right, sir. But you won anyway?

- A. Yes, sir.
- Q. All right. Now you ran again in 1987, did you not?
- A. Yes, sir.
- Q. Who were your—the same district? From the same district?
- A. Yes, sir.
- Q. Was the composition—the racial composition roughly the same again, about thirty-seven percent black?
- A. Yes, it was.
- Q. And against whom did you run?
- A. The same two opponents.
- Q. Mr. Gipson?
- A. And Mr. McDaniels.
- Q. And McDaniels, all right. And who won that race?
- A. I did.
- Q. Okay, sir. Now the Police Jury then reapportioned, and [41] you ran under their present plan, which is also the same redistricting proposal of the School Board, is that correct?
- A. Yes, sir, that is correct.
- Q. You ran in 1991?
- A. Yes, sir.
- Q. All right, sir. Who were your opponents?
- A. I was unopposed.
- Q. You filed and no one ran against you?
- A. Yes, sir.

- Q. So you swept into office without opposition?
- A. Yes, sir.
- Q. Now then, sir, do you—how many seats do you believe that African Americans or blacks ought to have on the Police Jury or on the School Board?
- A. At least two to three.
- Q. Why, sir?
- A. One is because of the fact that by me being—serving the Police Jury for three terms, I have never been able to get white support, regardless. No matter how qualified I am, my white colleagues never support me, under no circumstances. I felt that if we had atleast two to three minorities on the Police Jury that it would definitely be a lot different.
- Q. Do you believe that you are entitled to two or three because of the proportion of African Americans to the entire population?

[42]

A. Yes, sir.

Q. All right. Has somebody told you that the Voting Rights Act provides that you should be elected to office as a race in proportion to your numbers to the population?

A. Yes, sir.

[44]

Q. Mr. Darby, I am showing you an exhibit. It is number 5, I think. It is on the blue there, Mr. Darby. What exhibit do I call it? Exhibit number—exhibit

number 5. Now, that exhibit purports to be the minutes, an extract of the minutes of a Police Jury meeting in January of 1994. Would you read it, sir or have you read it?

A. The top?

[45]

- Q. Just read it to yourself right quickly. Did you attend the Police Jury meeting?
- A. Yes, sir.
- Q. The Police Jury meeting was, in part, a meeting about whether it wanted to redraw its plan, and there is some controversy about what it is saying, but do you recall that meeting?
- A. Yes, sir.
- Q. All right. And in that meeting, the Police Jury of Bossier Parish decided what?
- A. That it stood by its original reapportionment plan.
- Q. Okay. And it even quotes you as stating that you are concerned that if the Police Board and Police—the School Board and the Police Jury have different district lines, it would be confusing to the citizens of Bossier Parish?
- A. Yes, sir.
- Q. Did you make that statement?
- A. Yes, sir.
- Q. All right. However, Mr. Darby indicates that he supports the Police Jury's original plan, is that correct, sir?
- A. Yes, sir.

- Q. Did you say that?
- A. Yes, sir, I did.
- Q. So the minutes are accurate?

[46]

- A. That is accurate.
- Q. And that was as late as January 11, 1994, was it not?
- A. Yes, sir.
- Q. Do you still stand by those statements?
- A. That I support the Police Jury plan as of now?
- Q. Yes?
- A. No, sir. May I explain?
- Q. By all means, sir.
- A. Okay.
- Q. The Judge would probably like it.
- A. In January 11th of 1994, at that time I wasn't aware of the information as far as you could draw minority districts. And what I was saying, and what I have always said, that I wanted to see both, since both bodies have twelve members representing the same people, that we have the same district lines.

And that is what I was saying in that meeting. At the time—at that time I hadn't seen where you could do minority districts. So what I was saying is the fact that you could—that I supported what we had in place because of the fact that I was concerned about what it would do as far as jeopardizing that one seat that we did have.

Q. And you didn't know in January of 1994 that the NAACP plan had been drawn to provide two minority—protected minority districts? You didn't know about any such plan?

[47]

- A. I didn't keep up with it, sir.
- Q. All right, sir. Now, you have contended that blacks are discriminated against in the school system in your narrative statement?
- A. Yes, sir.
- Q. That is a pretty broad statement, sir. Do you have any instances or any names to supply the court?
- A. I have several instances if you would like me to share some of them.
- Q. Well, if the court wants it in a moment. Let me ask you this. Did you report those to the school system?
- A. Yes. Not to the administration. Usually it was always directly to that school.
- Q. All right. Whom did you report these to?
- A. Most of the time it would be like the school principal.

[48]

\* \* \* \* \*

Q. If I told you that any child, black, white, any child, that was accused of an infraction that might result in expulsion or suspension, that any such child had the right to a hearing in which he or she could bring anyone

they wanted there in his or her behalf? Do you know that to be true?

- A. Yes, sir.
- Q. All right. Do you know who generally presided over those hearings?
- A. Who generally presided over those hearings?
- Q. Um-hum?
- A. Probably it would be the school attendance officer.
- Q. Well, do you know a Mrs. Betty McCauley?
- A. Yes.
- Q. Did you know that she presided over those for some [49] years?
- A. She hasn't always presided over them.
- Q. No, she hasn't.
- A. At the time that you asked me about the principal?
- Q. Yes?
- A. That was Mrs. Owens.
- Q. Oh, okay.
- A. And at the time it was Ms. McCauley, she was also the coordinator at the very school we are talking about.
- Q. All right. Ms. McCauley is black, is she not?
- A. She is.
- Q. And at some point along the way a man named Joshua Pant—

THE COURT: How do you spell that?

MR. THORNTON: B-r-y-a-n-t, J-o-s-h-u-a, I think.

THE COURT: All right.

## BY MR. THORNTON:

Q. Mr. Bryant?

A. Yes, sir.

Q. And he presided over many of these hearings, did he not?

A. I couldn't answer that, Mr. Thornton, because I haven't gone to that degree. The degree that I have been involved with has been strictly for me, as a Police Jury [sic], to represent parents in my district. It wasn't to that level. It was always directly with the school.

[50]

Q. Did you know Mr. Bryant?

A. Yes, I do.

Q. What race is he?

A. He is black.

Q. All right. Now then if I told you that neither Ms. McCauley nor Mr. Bryant, in looking over these—in presiding over these hearings, could expel or suspend, that only the superintendent could, did you know that to be true?

A. No, sir, I didn't.

Q. And as the superintendent has testified in his narrative statement, when he makes a decision to accept or reject the recommendation for expulsion or suspension, that he doesn't even know the race of the student, are you prepared to deny that?

- A. No, sir. If you tell me that that is true, I will accept that, sir.
- Q. All right. Now, having learned all of this, can you think, or would you like to tell the court or us, for that matter, how you believe that we could make the suspension or the discipline system any fairer? What should we do that we are not doing?
- A. What should you do that you are not doing?
- Q. Yes, sir?
- A. One of the things, I think is the fact that even though you have those people in place, they haven't always been in [51] place. Ms. McCauley was one time the principal of a school. When I have gone for parents it has always been to resolve it before it did get to that, and so the level that I have always dealt with principals on was the level of the kids having problems in the classroom, as well as whether the teacher didn't quite understand what was going on with that child. It has always been on that level. It has never been to the level that you have described at this moment.
- Q. Okay. Would you fault our hearing system as being unfair?
- A. Being unfair?
- Q. Yes? Would you say that it is unfair?
- A. Just because you have two black people that are involved?
- Q. No, sir. Just because we have full and open hearings, and just because we don't make race an issue?
- A. Yes, sir.
- Q. Is that fair enough?

- A. I guess it is.
- Q. Then can you think of any reason why more—proportionately more black children are disciplined than white?
- A. Can I think of any reason?
- Q. Yes? If the hearing system is fair, what would be the reason?

[52]

A. Well, there are so many other variables that you have to take into consideration. Each case is different. There is information that sometimes might not always get—they might not get all of the information correctly.

A lot of things goes on that—before it even get to that. So before I make a statement like that, I would have to be able to look at all of the facts, and look at how it takes place, and all of the proper information to get to that hearing.

\* \* \* \* \*

- Q. Now, you state that you have tried to forget about race and politics, and that you concentrate on issues?
- A. Yes, sir.
- Q. You even state that you consider yourself to represent all of the constituents of your district, regardless of race, correct?
- A. Yes, sir.
- Q. And you have made that a theme in your campaigns, have you not?
- A. Yes, sir.

- Q. Do you think that that is proper to put race behind and talk about issues and represent the entirety of a [53] constituency?
- A. Do I feel that that is proper?
- Q. Yes?
- A. Yes, sir.
- Q. Could it be, sir, in your opinion that that may be the reason why you got so many white votes which enabled you to win in that district?
- A. To win in my district?
- Q. Exactly? Could that be the reason, because you didn't make race an issue?
- A. Well, for me as a black person, race has always been an issue, all thirty-seven of my years, regardless. I don't make the issue, but it is an issue, something that I live with.
- Q. But you got a lot of white votes, didn't you?
- A. Well, when I go back and look at the statistics, it was based on that black base, which is the black community is the one that really helped me to be successful. I did get some white votes, but I wouldn't say a lot of white votes.
- Q. Well, Mr. Gipson ran. Didn't he get some black votes?
- A. He sure did.
- Q. Okay. But in the overall, in the end, you got a lot of white votes which took you over fifty percent, didn't you?
- A. Yes, sir.
- Q. And you won?

[54]

A. Yes, sir.

And you didn't make race an issue, did you? Q.

A. No. sir.

And I am asking you now sir, maybe when you didn't make race an issue, maybe that is the reason that you got some of those white votes, hum?

Yes, sir, but I have never made it an issue.

All right, sir. And I congratulate you.

THE COURT: How many African Americans, sir, reside and are eligible to vote in your district?

THE WITNESS: At the time in 1983, it was about 500.

THE COURT:

Wait a minute? 19?

THE WITNESS:

83. 83?

THE COURT: THE WITNESS:

Yes, sir.

THE COURT:

Out of 500 voters?

THE WITNESS:

Registered black voters.

THE COURT:

And how many white?

I can't say, Judge, but it was more THE WITNESS: than 500. It has been a pretty good while, but it was a large number.

THE COURT: When was the last time that you were elected?

In 1987. Well, the last time I was THE WITNESS: [55] elected, 1990 [sic].

THE COURT: And what was the percentage of blacks and whites at that time, registered voters?

THE WITNESS: At that time I believe it was twenty-six percent.

THE COURT: That doesn't answer my question. How many black voters were there then, 1990, how many white voters, sir?

THE WITNESS: I don't recall. I can't tell you.

THE COURT: Well, which was the majority?

THE WITNESS: White was.

THE COURT: How much of a majority?

THE WITNESS: About sixty percent.

THE COURT: Sixty/forty?

THE WITNESS: Yes, sir.

THE COURT: And what was your margin of victory?

THE WITNESS: For my last election?

THE COURT: In 1991?

THE WITNESS: Well, that was the election that I was unopposed, so I didn't have anyone running.

THE COURT: What was your margin of victory, even though you were unopposed?

THE WITNESS: A hundred percent, I guess.

\* \* \* \* \*

Testimony of United States Government's witness Jerome Darby—Redirect Examination by the Appellants

[56]

BY MR. MULROY:

- Q. Mr. Darby, there is a military base in your district, is that correct?
- A. Yes, sir.
- Q. Does that have any effect on your ability to be elected in a white majority district?
- A. Yes, sir. In fact it has a big difference. That is what makes, I think, my election a lot more different than the whole area as far as Bossier Parish, because we do have a large military area in the Barksdale Air Force Base which they count that in my district, which makes it look like I have a large number.

But mostly military voters, they don't vote, because they live not necessarily—they are not registered to vote there, and they live up—not live other place, but basically as far as where they are registered it is not there. I have received some military votes as well.

Q. Well, of those military voters in your district who do vote in the local election, is there any reason to think that they might be more or less likely to support you as a black candidate?

[57]

A. One of the things from my own experience is that they are more open minded than most people that do live in Bossier. I think that a lot of it has to do with the exposure and being more open minded.

- Q. When you refer to exposure, do you mean the environment in which military people live in, on base or in off base housing, as opposed to the rest of the parish?
- A. Well, that and also coming from different backgrounds of the country where people are a lot more open minded.
- Q. So most of this military population is not from Bossier Parish.
- A. No.
- Q. They would not be from Bossier Parish?
- A. No. Basically, they are from all over the whole country.
- Q. In terms of whether or not they live in an integrated environment compared to the other white residents of Bossier Parish, do you have any knowledge about that?
- A. Yes. In fact basically they work real closely with different people from different ethnic backgrounds. Also you have a lot of blended families in military, so it is something that is not real unusual for them.
- Q. And when you say blended families, what do you mean by that?
- A. Meaning families that are not necessarily both white and [58] white or black and black.
- Q. Do you think that you could—based on your experience in Bossier Parish politics, do you think that you could get elected in a white majority district against a white opponent in some other part of Bossier Parish where there wasn't military population?
- A. No, by no means. And that holds true because of the fact that even when I have gone and campaigned

for other people, usually people in that parish vote along racial lines, meaning that blacks vote for blacks, and whites vote for whites.

Q. Let me turn to another topic. Mr. Joiner showed you —

THE COURT: Where was Congressman—former Congressman Espe [sic] from? Bossier Parish?

THE WITNESS: Espe, from Mississippi.

THE COURT: Oh, that is right, another state. Mr. Thornton condemn me for confusing Louisiana with Mississippi.

THE WITNESS: Yes, sir.

### BY MR. MULROY:

Q. Let me move to another topic. Mr. Thornton showed you some minutes of a January 11th, 1994 meeting. Let me ask you a question or two about that. At the time of that meeting, did you understand that there was an NAACP plan which—consistent with the one person one vote requirements and contiguity requirements created two black majority [59] districts? Did you understand that at the time of the January 11th, 1994 meeting?

A. No, sir.

Q. There is also a statement in those minutes that Mr. Thornton asked you about that said the you favored having the Police Jury plan and the School Board plan be the same to avoid voter confusion. The Police Jury plan and the School Board plan for the 1980s were different, correct?

A. Yes, sir.

- Q. So for the past ten years or more they have been different, correct?
- A. Correct.
- Q. In fact, since the proposed plan has [sic] not yet been implemented because it is the subject to this preclearance suit, the current plan to this day still has different plans for the School Board and the Police Jury, is that correct?
- A. Yes.

[60]

- Q. If you had to choose, Mr. Darby, between having a situation where the Police Jury plan and the School Board plan were the same, and there were no black districts whatsoever, or another situation where you had a Police Jury plan and a School Board plan be different, but at least the School Board plan would give you two black districts, if you had to choose between those two, which one would you choose, Mr. Darby?
- A. The School Board plan that would give you black districts.
- Q. Mr. Thornton-

THE COURT: In order to arrive at that answer, Mr. Darby—

THE WITNESS: Sir?

THE COURT: Excuse me, I apologize to you. In order to give that answer or arrive at that answer, how would you square that with the alleged impediment of Louisiana state law? Do you know what I mean by that?

THE WITNESS: No, sir, if you could explain.

THE COURT: Well, counsel have informed me that in any redistricting plan Louisiana law does not permit changing precinct lines. Have you heard that?

THE WITNESS: I have heard them talk about that throughout this trial. Basically, when we was redoing our—when we was doing our reapportionment, that wasn't a factor. Basically what we basically concentrated on was just the districts, drawing the district lines.

THE COURT: And that cut across precinct lines?

THE WITNESS: District lines?

THE COURT: The new district lines that you were drawing cut across precinct lines?

THE WITNESS: Yes, sir.

THE COURT: And they have argued here that [61] Louisiana state law prohibits that.

THE WITNESS: Yes, sir.

THE COURT: Okay. All right.

MR. MULROY: Thank you, Judge. One final point.

# BY MR. MULROY:

Q. Mr. Thornton was asking you some questions about discipline in the schools in Bossier Parish and whether there was any racial discrimination in meting out discipline to students. Your experience you testified on cross examination with the discipline of students was at the lower level, believe [sic] you got to the formal hearing process, is that correct?

A. Yes, sir.

Q. And it is possible for discipline to occur at that level, correct?

- A. It definitely is.
- Q. And in your experience that discipline at that lower level which you know about occurred disproportionately to black students?

A. Yes, it did.

\* \* \* \* \*

Testimony of United States Government's witness Jerome Darby—Recross Examination by Appellee [62]

BY MR. THORNTON:

Q. So it wasn't a question of cutting and splitting precincts, it was creating new precinct lines in order to reflect the shift of population from the 1980s to the 1990s?

MR. MULROY: Your Honor, I would like to object to the way that counsel is characterizing that statement, as though there was necessarily some difference between creating a precinct and cutting and splitting precincts.

THE COURT: I think that the court has got enough intelligence to understand that. Overruled.

MR. MULROY: Thank you, Judge.

# BY MR. THORNTON:

- Q. You created new precincts under the one man one vote [63] rule didn't you?
- A. Yes, sir.
- Q. And that is your obligation as a Police Jury, is it not?
- A. Yes, sir.
- Q. Because you are the governing body of the parish?
- A. Yes, sir, that is correct.

- Q. So you create new precinct lines to reflect the shift in population, and then from that you drew your district lines, twelve of them, is that correct?
- A. Yes, sir.
- Q. All right. Mr. Darby, do you have any reason to believe, or do you have any statistics, or is there any data available to indicate to you that the white votes that you got in your district were Barksdale people—

THE COURT: Were what?

### BY MR. THORNTON:

- Q. Were Barksdale Air Force people any more than they were just any other white citizens in that district?
- A. Do I have any data?
- Q. Yes?
- A. Well, if you look at the two precincts that are in my district, basically one of the precincts is predominantly black. It has some white voters there as well. The other precinct is predominantly white. Of course, that means that when military people vote, they vote at that predominantly [64] white precinct. So based on what you just said, no.
- Q. So you don't have any data on that?
- A. No.
- Q. Actually, Barksdale Air Force Base has been there in Bossier Parish for seventy, eighty, or ninety years, has it not?
- A. Yes, sir.
- Q. It is an old Air Force Base?
- A. Yes, sir.

- Q. And Bossier Parish is pretty well populated by people from the military who retired at Barksdale Air Force Base and simply stayed in the Bossier community, isn't that correct?
- A. Yes, sir, that is correct.
- Q. So Barksdale people, whites and blacks, are scattered throughout the parish, are they not?
- A. Yes, sir, that is correct.

\* \* \* \* \*

Testimony of United States Government's witness Jerome Darby—Further Redirect Examination by the Appellants

[64]

# BY MR. MULROY:

Q. Mr. Thornton just asked you whether the Barksdale [65] population might be scattered throughout the parish. Based on your experience as a native of Bossier Parish, and your experience in Bossier Parish politics, would you say that there is a higher concentration of what Mr. Thornton called, Barksdale people, in your district as opposed to the rest of the parish?

A. Yes. Because it is closer to the military base, and usually for the area, as far as the community, Government Park and the area along there, that is where most military people, if they are not living on base, they move in those areas.

\* \* \* \* \*

Testimony of Appellant-Intervenors' witness Jerry Hawkins—Cross Examination by Appellee

[67]

### BY MR. THORNTON:

- Q. Mr. Hawkins, how many seats do you believe on the School Board African Americans ought to have?
- A. At least two, sir.
- Q. Why? Why two?
- A. Because of the districts.

THE COURT: Because of what?

THE WITNESS: Because of the number of districts that we have.

# BY MR. THORNTON:

- Q. Do you think that you ought to have two members because that is your proportion to the population?
- A. Yes.
- Q. All right. Do you believe that that is what the Voting Rights Act stands for?
- A. Yes
- Q. Has anyone ever told you any differently?
- A. No.

[68]

Q. You made the statements that blacks are treated unequally in the school system. Do you believe that?

A. Yes.

[69]

Q All right. Are you familiar that—with the law suit entitled Lemon versus Bossier Parish?

A. Yes, partially.

Q. Do you understand it to be the litigation vehicle that presides over the Bossier Parish school system with regard to integration?

A. Yes.

Q. All right, sir. If you believe that blacks are treated unequally in the school system, have you ever filed, or seen filed, or caused to be filed any documents in the *Lemon* case in say the last fifteen years that would assert that?

A. No, sir. But in 1988, I believe it was 1988, the Concerned Citizens raising money for that, and we hired an attorney out of Monroe to go against that litigation, I believe.

And the lawyer did not file the suit. And we was out of money, so we couldn't file another suit, so we went another different direction by contacting J. Bennett Johnson. Sent him a letter, and also sent a letter to Congressman Buddy Roemer at that time. We done everything we could to try to stop this litigation.

Q. I see. But you did not file—nothing was filed in Lemon?

A. No, no, sir.

Q. That would have been the place to file it, wouldn't it?

[70]

A. I suppose.

....

Testimony of Appellant-Intervenors' witness George Price—Cross Examination by Appellee

[77]

BY MR. THORNTON:

Q. Tell me, sir, how many seats on the School Board should black citizens hold?

[78]

- A. I believe that the population of Bossier Parish is such that it is sufficient enough to elect at least two blacks to the Bossier Parish School Board.
- Q. Do you believe that this is true because of the proportion of the black population to the entire population?
- A. When we look at the number of the seats on the Bossier Parish School Board, taking into consideration the total population of the parish, I feel that to be the case.
- Q. All right. Now, I want to show you something, Mr. Price, and ask you some questions about it. Do you have your narrative statement in front of you?

A. I do.

MR. THORNTON: I am not sure that I have his latest one right here. May I approach the witness and coordinate?

THE COURT: Of course.

THE WITNESS: What page was that?

MR. THORNTON: Well, let's see, it was on page twelve, and it appears to be twenty-three, paragraph twenty-three. THE WITNESS: That is not it. Do you have a current—is that my testimony that you have?

MR. THORNTON: Yes.

THE WITNESS: It is April 7th. You need to get the updated copy.

MR. THORNTON: While he is trying to get that I [79] will go on and save some time.

#### BY MR. THORNTON:

- Q. Mr. Price, when you asked to have some participation, or wanted some participation in drawing the redistricting or reapportionment plan for the School Board, you wrote some letters, did you not?
- A. That is correct.
- Q. And I think that those letters are exhibits here?
- A. Right.
- Q. All right, sir. And I think that you have a complaint that they were not answered, or that you were not allowed in on the reapportionment planning, is that correct.
- A. No, sir. That is partially correct. Initially, I wrote a letter to the superintendent in March of 1992 requesting information concerning the upcoming reapportionment process, and that we would want to be made aware of the status of the reapportionment process.

As I communicated with the Bossier Parish School Board, I always did that in a written form, and I always asked that they would respond in a written form, because in the past I had been made aware of people not remembering communications by telephone or by hearsay. So I have always communicated in a written

form, and I have always asked them to respond in a written form. That was not done.

- Q. What kind of participation did you have in mind?
  [80]
- A. I wanted to be involved to present what I considered the minority views on the current makeup of the School Board which consisted of twelve white members, and the fact that we felt as though we needed a voice on that particular School Board.
- Q. All right. Did you want to have a vote in the reapportionment?
- A. No, sir. As I indicated in my correspondence to the School Board, we always respected the authority of the School Board, and we always asked that we work through the School Board.
- Q. Did you want to have a right to sit in the executive sessions with them when they talked about this problem?
- A. No, sir. All of my communications was through School Board members. I never considered myself capable or able or authorized to sit in any kind of executive sessions with the Bossier Parish School Board.
- Q. So the participation that you had in mind then was the participation or the right to tell the School Board the views that you had and wanted to see them adopt, is that right?
- A. Again, partially correct. Counselor, I wanted to tell them the concerns and the desires that existed in the minority community. I wanted to tell them how the minority community felt about the issues of the Bossier Parish School Board.

[81]

- Q. All right, sir. Now in any public School Board meeting, as I recall you can sign a book outside which indicates that you want to speak to the board, is that correct?
- A. That is correct.
- Q. Now, sir, during this period of time during this redistricting, did you ever appear before the School Board?
- A. I appeared before the School Board on numerous occasions, and again, I want to emphasize that we initially requested this in March of 1992, and that the reason why we requested this was to have a written response from the School Board so that when these meetings were held our presence and our presentations would be a matter of record.
- Q. Well, did you get to make those presentations?
- A. We always had an opportunity to go before the School Board, and—
- Q. Well-
- A. I am sorry, go ahead.
- Q. No, I interrupted you, Mr. Price, I am sorry.
- A. Okay. Yes, we went before the School Board, and when we finished they would say, thank you, and they would go to the next agenda item.
- Q. All right, sir. Did anybody ever deny you the right to address the School Board and present your concerns?
- A. I have never been told that I couldn't speak.

- Q. Let me ask you this. From time to time you have given [82] complaints about the school system to Super-intendent Lewis, have you not?
- A. Again, I have spoken with the superintendent on numerous occasions.
- Q. And sometimes you gave him a written list of complaints, have you not?
- A. Every presentation that I have made before the School Board, I provided the School Board with copies.
- Q. I am asking you about Superintendent Lewis?
- A. If I met with Superintendent Lewis, I gave him copies.
- Q. One of your concerns has been that they didn't hire enough black teachers, isn't that correct?
- A. That is correct.
- Q. All right. Mr. Lewis tells me that he invited you to go along with them on one occasion when they were trying to recruit black teachers. Did you go?
- A. When did he ask me?
- Q. That is not true then?
- A. I said, when did he actually-
- Q. I am asking you. He told me that he had. I am asking you if that is not so?
- A. Well, may I explain when he asked me?
- Q. Oh, sure.
- A. He asked me after several presentations before the School Board, several written pieces of communication before [83] the School Board, and he asked me to go with the School Board on a day in which—I am fully

employed, and I couldn't go. Yes, he asked me to go with them.

- Q. All right. Now, is it true that you requested of Superintendent Lewis that more black teachers be assigned to predominantly black schools to provide role models for the young students?
- A. If you will excuse me for a second. I am looking for exactly what I requested, because it was in writing. I requested that—in item D of a presentation that I made to the School Board, the development of a reassignment and a transfer program to insure parity or equalization of minority teachers at all schools. That is what I asked for.
- Q. You didn't talk in terms of assigning black teachers to black schools as role models?
- A. No, sir. I have always advocated black teachers to be in these places for children to communicate with and be there. I don't hold the perception that blacks are the only persons that should have role models. I believe that role models are important to all people.
- Q. Thank you, Mr. Price, but really what I am asking is, did you in any way indicate to Superintendent Lewis that you would like to see more black teachers assigned to predominantly black schools as role models. That is all that I am asking you.

[84]

MR. BORKOWSKI: I would object that the question has been asked and answered.

THE COURT: Once more.

THE WITNESS: All right. What I Superintendent Lewis in a conversation that we had—we have several

schools in Bossier Parish with no black teachers. I asked that those teachers could be reassigned so we could at least have black teachers at every school. That is what I asked as eluded [sic] to in my statement here.

THE COURT: All right. Anything else?

MR. THORNTON: Yes, sir.

THE COURT: All right.

MR. THORNTON: Not on that though. I am finished with that line of questioning.

THE COURT: All right. What else do you want to know?

### BY MR. THORNTON:

Q. Well, I want to direct you to your narrative statement on paragraphs twenty-five and twenty-six. Do you have it before you?

A. I sure do.

Q. All right. Let me read twenty-five, and you follow me and tell me if I read it incorrectly. Twenty-five: It is a widely held perception in the African American community of Bossier Parish that it is pointless for any African American [85] who will stand up for the interest of the black community to run for office.

MR. THORNTON: That is paragraph twenty-five Your Honor, I am sorry.

THE COURT: I have got it.

## BY MR. THORNTON:

Q. The perception is based on the knowledge of the population breakdown of the election districts, all of which are majority white, and knowledge of the dynamics between blacks and whites in the parish, specifically

the wide-spread belief that most whites will not vote for a black candidate. In addition, there is a majority vote requirement in Louisiana elections.

Number twenty-six: Only three African Americans have been elected to significant political offices in Bossier Parish from majority white electoral districts. Johnny Gipson was elected to the Police Jury in 1975 [sic]. He had a reputation for speaking out about issues of concern to the African American community.

He served one term, being defeated in 1983 by Jerome Darby, another African American who has been reelected twice since 1983. In addition, Jeff Darby, his brother, was formerly a member of the City Council of Bossier City, but was defeated by a white candidate in the last election.

Neither of the Darby brothers is a member of the NAACP [86] or the Concerned Citizens Association, nor has either brother attended meetings or associated with either organization—with either organization in any way.

It is a widely held perception in the African American community of Bossier Parish that the only way that an African American can have a chance to get elected from a majority white district in the parish is by keeping a low profile with regard to racial issues, and not belonging to or being associated with organizations such as the NAACP or the Concerned Citizens.

Let me ask you some questions about those statements.

A. And I would like to just make the statement that I stand by every word of that.

Q. Good, good. Now, Mr. Price, do you think that race ought to be an issue in an election?

A. Sir, I don't think that race ought to be an issue, but you and I both know it is.

Q. You are speaking for the black community, Mr. Price. Please don't speak for me.

A. Well, I can only assume that you are aware of how things are in America.

Q. Mr. Price, is it your idea that a black who is elected to office ought to represent only the blacks in his constituency?

A. No, sir.

[87]

Q. Do you condemn the Darby brothers—

A. No, sir.

Q. —for not making race an issue?

A. No, sir.

Q. And yet I would treat your account of this as being very critical of them for not being—or standing up, as you put it, for black citizens?

A. I haven't seen any in my statement—

THE COURT: Objection sustained.

THE WITNESS: I haven't seen anything in my statement that mentions race.

THE COURT: He objected. I sustained the objection. He stood up and objected.

MR. THORNTON: I didn't hear anything.

BY MR. THORNTON:

- Q. The only way that an African American can have any chance to get elected from a majority white district is by keeping a low profile with regard to racial issues. What did you mean by keeping a low profile, of not making race an issue?
- A. I believe that it is identified in that statement as I said, by speaking out on racial issues, or being members of the organizations that are identified in the statement.
- Q. Mr. Price, you stand by this statement you said, every word of it?

[88]

- A. Yes, sir.
- Q. All right, sir. Mr. Price, when you have made any sort of complaints about the school system, had Mr. Lewis always accepted what you gave him?
- A. Mr. Lewis has always accepted what we gave him, but not yet responded to what we gave him.
- Q. Well, did he explain to you the problem as he explained to the court of trying to hire more black teachers? Is that the first time that you ever heard his explanation?
- A. No, sir, it is not. But we went before the School Board and presented a list of concerns from the black community. We asked that they respond to those concerns. After several weeks of no response, we went back again and asked what happened to those concerns?

They asked us to provide a list of solutions to our own concerns, or to give them some ideas of how these things could be done. We did that after much research. We did that. We submitted what we considered partial solutions to our concerns, and that did include a recom-

mendation on how to recruit more black teachers. Yes, sir, we did that.

- Q. All right, sir. Let me ask you what was your solution? You have Superintendent Lewis in the back, and I know that he is retiring, but tell him, tell the court what you want him to do that he hasn't done?
- A. Again, counsel, I want to make clear of what I am [89] saying. I am saying that as we went before Bossier Parish School Board, we always submitted suggestions and concerns. We never submitted goals. In my statement we identify what could be done—what, in our opinion, could be done to recruit more black teachers. Let me see if I can find it quickly.

On page eleven of my testimony. The main areas of concern about school operations are as follows. Develop an early recruitment for black teachers, diligence in recruiting, hiring, retaining, and promoting African American teachers.

Those were our concerns. Let me see if I can find our solutions—our recommendations rather. I am not able to find it, but I believe that it is a matter or record. If I could have—

Q. Let me just ask you this-

A. Just a minute. I have them here. I have them here.

THE COURT: What page?

WITNESS: Suggested solutions in my testimony, sir.

THE COURT: Page and paragraph what?

THE WITNESS: I don't see a number on there.

MR. BORKOWSKI: Your Honor, that is at twelve A.

THE COURT: Thank you.

THE WITNESS: I said the Coalition of Bossier [90] Parish, Concerned Citizens of Bossier Parish, Men's Club, Concerned Citizens of Plain Dealing and Bossier Parish Branch and NAACP suggested solution to our concerns to Mr.—

MR. THORNTON: Wait a minute. I am still looking for that. That is exhibit what?

THE COURT: They are not labeled as exhibits in the attachments to the statements furnished the court.

MR. THORNTON: Can you show it to me?

MR. BORKOWSKI: Yes, sir, absolutely.

THE WITNESS: Counselor, this suggested solutions to our concerns was addressed to then President Barry Musgrove, and this information or response is provided to you as a follow up to our presentation on July the 15th.

The Executive Committee of Bossier Parish Branch of the NAACP, and other organizational leaders, met on July the 20th, 1993, to discuss the best method of previous recommendations to you that we feel will improve certain areas of our school system.

We hope that the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns. And then we went on to name our recommended solutions.

And in item two the issue of teacher recruitment concerns us greatly. We feel strongly that additional efforts can result in the placement of additional minority [91] teachers into the Bossier Parish school system. The following steps may help. Expand the area of recruitment to include—

#### BY MR. THORNTON:

- Q. Mr. Price, let me interrupt you. We have it—the court and I have it before us.
- A. Well, I wanted to make sure that you understood it.
- Q. I think that the court has, too. Let me ask you some questions about them, unless the court wants you to read them all into the record.

THE COURT: No. They are already in the record as a part of his testimony—direct testimony. Sir, you don't have to read them again, because the court has them before it, unless you want to read it.

THE WITNESS: Well, sir, I wanted to point out a couple of things.

THE COURT: All right. Why don't you do that, because this is an important matter for you and for all of us.

THE WITNESS: Yes, sir. And item G of this—on these recommendations, we ask the insurance that the School Board show compliance with the 1970 consent decree which requires a seventy-five/twenty-five high end ratio until requirements are met.

Currently, we are not in compliance with that [92] requirement by the courts, and that simply meant that for every hundred teachers hired for Bossier Parish, twenty-five should be black, and seventy-five should be white, until the School Board was in compliance with

the consent decree, and that is why we were very concerned about that issue as we present it in this particular document.

### BY MR. THORNTON:

- Q. Now, Mr. Price, let me ask you about this. You heard Mr. Lewis this morning, did you not, answer the court's questions about how he goes about trying to recruit black teachers?
- A. Yes, sir. He said that he goes to Grambling and Louisiana Tech.
- Q. Well, I think that he talked about LSU as well, did he not?
- A. But as you notice in our recommendations, we included some of the southern black—predominantly black colleges in the State of Louisiana such as Southern in Baton Rouge, Xavier, and Dillard in New Orleans, and we expound on that, and we made some recommendations on how that could be done.
- Q. You think that he is not going to enough schools, is that it?
- A. Yes, sir. This document, I think, speaks for itself.
- Q. He also talked about the difficulty of hiring because of salary gaps with neighboring parishes. Do you think that [93] that is a concern?
- A. Well, we have talked about that even before the School Board. Now, my concern is the dilemma there. If whites have—

THE COURT: Wait a minute, your concern is what, sir?

THE WITNESS: I have a dilemma with his explanation of why he can't hire blacks. Your Honor, there is

no problem to hire white teachers in Bossier Parish, and I asked the question at the School Board meeting, are you all paying them different? Do white teachers make more than blacks? He said no.

I said, well, why don't you have a problem if salary is a problem hiring black—I mean white teachers. You always have white teachers. He said, well, I don't know. But the question still remains, if the salary in Bossier Parish is low, why is there no problem recruiting white teachers, only black teachers?

And what I have been told by black teachers is that the reason why they don't come to Bossier Parish, they cannot get promoted. They are not treated fairly in the system, and they have to leave, because they come in and see white teachers come in that they know received certification after them, and they rise to higher positions in the system, and the blacks that have been there do not get those [94] opportunities, and they seek them elsewhere. That is one of the things that we have expressed as a concern.

# BY MR. THORNTON:

Q. Well, Mr. Price, if that is true, then shouldn't motions and petitions have been filed in the *Lemon* case to protest that?

THE COURT: Mr. Thornton, how can—this is a lay person. He may be a leader in the community, and nobody doubts that—and nobody doubts that, I don't think. At least the court doesn't doubt it.

THE WITNESS: Thank you, Your Honor.

THE COURT: But he is not supposed to pursue everything in the world through the courts or whatever, is he?

MR. THORNTON: I think he is.

THE COURT: Well, maybe you do.

MR. THORNTON: They certainly have attorneys to do that.

THE COURT: I don't know whether they do or whether they don't. The issue in this case is whether the Attorney General of the United States properly denied preclearance of the districting plan for the election of School Board in 1993 for the Bossier Parish.

That is the issue. It doesn't have anything to do with whether he has filed a motion to supplement the record, [95] or to intervene, or to get some further relief in a school desegregation case. That doesn't have anything to do with that, does it?

MR. THORNTON: Your Honor-

THE COURT: Does it? Does it?

MR. THORNTON: Well, with all due respect to the court, yes, it does.

THE COURT: All right. Thank you very much. If it does, I will take your word. You can say that it does, and you can give me a memorandum showing my why. All right, next question.

MR. THORNTON: All right, sir.

### BY MR. THORNTON:

- Q. Do you think, Mr. Price, that the disciplinary system falls more heavily on black students than on white students in Bossier Parish?
- A. Without question it does.
- Q. Have you ever attended one of those hearings?

- A. I have had numerous members of the NAACP request that I go, and I have been asked not to come on some occasions by some of the School Board people, that they could handle and resolve that issue. I have not attended a School Board hearing with any parent.
- Q. Is it your testimony that you have been told that you have been discouraged from attending any of those hearings, [96] and if so, by whom?
- A. By School Board officials.
- Q. By whom?
- A. By Joshua Bryant. By the personnel man in Bossier Parish, oh, what is his name?
- Q. What reasons did they give you?

THE COURT: Well wait a minute. Let him think. Don't jump on him.

THE WITNESS: That they would resolve the issue. That they would resolve the issue. And might I say in my opinion, and I am speaking from my opinion now, that these issues are things that they would rather not have public concerning the treatment of the students in the system, so they would refrain from any opportunity of making allegations of mistreatment of students, especially black students, a public issue. And they will tend to resolve that.

### BY MR. THORNTON:

- Q. And the people who told you this, were they black or white?
- A. They are black.
- Q. All right. You heard Mr. Lewis outline the procedure for disciplinary action in the Bossier Parish School Board. Do you think that that is a fair system?

A. It may have the mechanisms in place to be a fair system, but again, my opinion is that it is not a fair system.

[97]

- Q. How would you make it more fair?
- A. Well, I would certainly have people that have legitimate concerns and complaints heard, and I would certainly look into—and let me just emphasize on what I am talking about here, too.

We went before the School Board and asked for statistics on expulsions, on disciplinary actions, on kids being put in the GASP program, on the low scores of black students, and they have told us that they don't keep those statistics according to race.

But yet we know that there is some differences between the number of black expulsions and retentions that they have in the system than there are as they apply to the white students. They told us that they do not keep those according to race.

- Q. You are telling this court and me, under oath, that there are different standards for disciplining white from blacks in the Bossier Parish school district, is that what you are saying?
- A. I am telling you my opinion, and my opinion is, yes, it is.

THE COURT: And that African American people, or students rather, excuse me, are treated more severely?

THE WITNESS: Yes, sir.

THE COURT: Than white people?

[98]

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: For the same offenses.

THE COURT: Correct. I understand your position and testimony.

MR. THORNTON: I have just a question or two, Your Honor.

#### BY MR. THORNTON:

- Q. During the redistricting process, Mr. Price, do you know of any group representing any—or claiming to represent any group of people, black, or white, or so forth, who had any more participation in the plan and the reapportionment process than the Concerned Citizens or the NAACP?
- A. Counselor, when you say participation, let me tell you what my definition of participation is. Participation to me is not coming to the board and presenting an optional plan and leaving. Participation is trying to find out what they can do as board members that were duly elected to represent us to address these concerns.

Nobody never came to us and sat down with us and said, what can we do as your elected board members to do something about your concerns? They let us make presentations, and as I said a few moments ago, after we made the presentation they said, thank you, and they went on to the next agenda item. Now, I don't know what you mean by participation. I don't [99] consider that participation. I consider that coming and making a presentation.

- Q. All right. Now, do you know of any other groups, any groups whatsoever, in which any School Board member went to see and asked about the redistricting plan?
- A. I know that there was some people there from the Concerned Parents of Plain Dealing. I know that there was some people there from the Tenant Coalition, and I know that there was some people there from the Bossier Parish Voter League, all of whom the presidents of those particular bodies elected me as their spokesperson, and was in agreement with the letters and the documents that I presented. I don't know what else—how else I can answer you on that.
- Q. Well, I guess the only question, Mr. Price, was in the participation. Do you know of any group that participated any more actively than your presentation, or who sat in on the meetings that adopted the reapportionment plans? If you do, tell us who they are?

THE COURT: What year are you talking about? 1991?

MR. THORNTON: 1992, 1993, and even into 1994.

THE COURT: Wait a minute. I am the Judge here. I have got to decide this case. Now, you are talking about a 1991 plan, or was there one in 1992, or just action on a 1991 plan in 1993? Now what are you talking about?

MR. THORNTON: I am talking about the deliberations [100] of the School Board in 1992.

THE COURT: All right. That is different than 1991 and 1993. What did they do in 1992?

MR. THORNTON: And on into 1993.

THE COURT: What did they do? Did they adopt a plan during that period?

MR. THORNTON: They adopted a plan during that period.

THE COURT: The School Board?

MR. THORNTON: The School Board.

THE COURT: For election of its members?

MR. THORNTON: On the time schedule—I think it was in September of 1992.

THE COURT: All right.

THE WITNESS: October, October.

MR. THORNTON: October of 1992.

THE COURT: Thank you, sir. You are helpful.

THE WITNESS: Thank you.

MR. THORNTON: Do you want me to restate my question now?

THE WITNESS: Yes.

THE COURT: Well, we have got to keep it in focus, Mr. Thornton:

THE WITNESS: Yes.

BY MR. THORNTON:

[101]

Q. Do you know of any group, any group of citizens, any private group, not the School Board members but any private group who sat in on the deliberations with the School Board when it was discussing the adoption of a reapportionment plan?

A. Let me reemphasize to you what happened. Again, the major black organizations in Bossier Parish elected me as their spokesperson.

THE COURT: You have said that.

THE WITNESS: All right. We came to these meetings and made presentations. We did not sit in on deliberations or decision making as the plan was adopted. We made presentations.

When the plan was voted on, the night that the plan was voted on, we had a map on display, as well as the Bossier Parish School Board had a map on display. After our presentation at the public hearing, they moved on to adopt their plan.

Now, I don't know what you mean by participation. You keep using that word, but I have a difference—a different idea of what participation is and what presentations are.

MR. THORNTON: May it please the court, I know that I am taxing the patience and time of the court, but I am not getting answers to my questions.

[102]

THE COURT: Overruled. You may not be getting the answers that you want, but you are getting answers. So that is it.

MR. THORNTON: Well, in that case, Your Honor— THE COURT: What else can you do about it? Nothing. MR. THORNTON: I can give up I guess on this witness.

THE COURT: I believe that you could. It is your option.

Testimony of Appellant-Intervenors' witness George Price—Redirect Examination by Appellants [102]

BY MR. BORKOWSKI:

Q. Mr. Price, after you sent this letter to the School Board asking to participate in the redistricting process, you weren't given any information, were you, about any work session that the School Board had with Mr. Joiner to look at options or work on a plan, were you?

A. No, sir. No response at all.

Testimony of United States Government's witness Jerome Blunt—Cross Examination by Appellee

[106]

#### BY MR. THORNTON:

- Q. When you were on the School Board, Mr. Blunt, did you have much contact with Mr. Price or any of the other leaders of the black community?
- A. I don't quite understand your question. When you say contact, do you mean at regular board meetings?
- Q. No, sir. I mean outside of board meetings. Were you close to those groups?
- A. No. I would say no, I wasn't close.
- Q. Did they ever talk to you at all about their concerns in the school system?
- A. At the board meetings, yes.
- Q. How about outside of the board meetings?
- A. No, they didn't.
- Q. They didn't ask you, for example, to go to the superintendent and talk about hiring black teachers?
- A. No.
- Q. They didn't come to you as a black School Board member and ask you to look into the disciplinary mechanism in the school system?
- A. No.
- Q. They didn't come to you and ask you about assigning black teachers to black schools as role models?

A. No.

[107]

- Q. Why do you think that they didn't do that, Mr. Blunt?
- A. My personal opinion on that, Mr. Thornton, is that Mr. Price and the coalition have been fighting this fight for a long time. They had information that—they are long-time Bossier residents, so they knew the ins and outs of the school system, and they knew, in fact, what the minority community wanted and needed.
- Q. But you were sort of an insider at that point, sort of on the School Board?
- A. That is right.
- Q. I would have thought that they might want you to lead or to pinpoint their concerns within the school administration. They didn't ask you to do that?
- A. No. I would like to explain that answer. The African community in Bossier Parish is concerned about various things in the school system, but also we have our own things that we are concerned about now.

My role as a School Board member was to represent District K, the district that I was concerned [sic]. Now, I was also concerned about all of the members of the parish also, too. As a School Board member then, my concern is the entire parish and my district.

- Q. Did you consider, then, that you really represented the whole constituency, and you were interested in the betterment of that district and the School Board system, is that [108] correct?
- A. Absolutely.

- You didn't think that you just represented blacks, you thought that you represented everybody, is that correct?
- That is correct, but I would like to expand on that answer.
- Q. All right, sir, by all means?
- Okay, I represented the whole school system. I think that that is foremost. But when there is a population that seems excluded, that does not seem that they are a part of the system, then my role also as a board member is to look into those concerns and to talk with those people about those things.
- And did you?
- I was aware of those things at the board meeting. When I was on the board, a lot of those things were already in place. As Mr. Price had talked to earlier, he had asked to be on the process early in 1992. My appointment started in September 1992.

[109]

Q.

When you ran for reelection, did Mr. Barry Musgrove give you any assistance in running?

I asked Barry Musgrove, and he gave me some information, but when I asked for support from my fellow colleagues as an incumbent, all of them were basically afraid to come out and say that I am supporting Jerome Blunt, because they were worried about the persecution if they-of their constituents maybe, and the persecution of the person who maybe would replace me.

Q. In other words, they didn't take a real active part, but they did—Mr. Musgrove gave you some advice, did he not? I mean—

A. Yes.

[110]

Q. I mean seemed friendly to your campaign?

A. Yes.

. . . . .

Testimony of Appellant-Intervenors' witness David Creed—Cross Examination by Appellee [115]

BY MR. THORNTON:

Q. You say that it has been a common practice in Louisiana to cut and split precincts?

A. Yes, sir. To my knowledge, and I am confident that that is true.

Q. Oh, I think it is. And there is a state law that you are aware of, are you not —

A. Yes, sir.

Q. — that prevents that?

[116]

A. Act 925, that is right.

Q. But the Police Jury sometimes accommodate other subdivisions by splitting precincts?

A. Yes, sir. And all of the cases that I know about they have accommodated.

Q. Do you know of any law, or have you been told of any court decision or any law that says that a Police Jury can violate or set aside the state law for these purposes?

A. Well, I -

MR. BORKOWSKI: He is assuming facts that are not in evidence.

THE COURT: Overruled. I will let him answer.

THE WITNESS: Am I aware of any laws at all?

MR. THORNTON: Yes.

THE WITNESS: That would allow -

#### BY MR. THORNTON:

- Q. My question, Mr. Creed, is when you are doing these, you don't know—or do you basically know whether what you are doing is legal in Louisiana or not?
- A. I believe that it is legal, yes, sir.
- Q. All right, On what basis do you believe it?
- A. Because I have found nothing in the law that it violates any laws anywhere, and because I have done—counting the one that I am working on now, I have done—that makes fifteen, and they have all been precleared, and accepted, and [117] elections have been held, and people now hold their positions, and I guess that I am assuming that it is legal.
- Q. You are assume [sic] that it is legal?
- A. Yes, sir.
- Q. All right. Now then, you state some opinions about gerrymandering?
- A. Yes, sir.
- Q. And your opinion is that this—well, not this plan, but the plan that was—the plan that the Bossier Parish School Board presented and is before this court, you are saying that that is a gerrymandered plan?
- A. No, sir.
- Q. Well, are you saying that Mr. Cooper's plan is gerrymandered?

- A. No, sir.
- Q. So you see no gerrymandering at all?
- A. Everyone seems to have a different definition of gerrymandering here.
- Q. What is yours?
- A. My definition—it is in my written testimony, but generally that you would take a geographical area and draw an area in order to create a district for an elected body that would take all kinds of twists and turns and be what I said was tortuous and convoluted in order to arrive at whatever goal it might be that you are trying to arrive at in drawing [118] the districts. That is gerrymandering to me.
- Q. Would gerrymandering be the opposite of sound demographic principles?
- A. It would not be consistent with sound demographic principles.
- Q. All right. If you have sound demographic principles and use them, you would not have a gerrymandered district, would you, is that fair enough?
- A. That is fair.
- Q. And you don't find that there is gerrymandering in any of these plans?

THE COURT: Which plans? Any of—there are so many that we are talking about here, I want to know which ones you are asking about?

# BY MR. THORNTON:

Q. The School Board, and have you seen the Cooper two plan?

- A. I understand that there is a NAACP plan. I have not seen that plan.
- All right. You have seen the Cooper plan?
- A. I have seen one called the Cooper plan.
- Q. And you have seen the one that we call the Police Jury plan that is before this court?
- A. Yes, sir.
- Q. And you find no gerrymandering in either of those?
- A. I find it to be about the same as most of the plans that [119] I have seen developed and approved.
- Q. All right, sir. I had one other question and it slipped my mind. Just a moment. Oh, the question was, sir, in all of the precinct splitting of plans that you helped to get to preclearance, what is the largest number of precincts that you have ever split?
- A. Eight.
- Q. No more than eight?
- A. No, sir.

MR. THORNTON: No further questions, Your Honor.

THE COURT: When did you draw—no further questions.

MR. THORNTON: From me.

THE COURT: Do you have any?

MR. BORKOWSKI: No, Your Honor.

THE COURT: Are you finished?

MS. HUME: Yes, Your Honor.

THE COURT: All right, Mr. Creed, let me ask you a question.

THE WITNESS: Yes, sir.

THE COURT: You say that you have in the course of your work over the last fifteen years I gather

THE WITNESS: Yes, sir.

THE COURT: —have drawn a large number or a substantial number of boundaries, geographical boundaries for [120] the election of various entities or political –

THE WITNESS: Yes, sir.

THE COURT: - groups?

THE WITNESS: Right.

THE COURT: Throughout the State of Louisiana?

THE WITNESS: Throughout northeast Louisiana is where—I am located in Monroe Louisiana, and Louisiana has eight planning and development districts which cover the state, and the one that I am the director of covers the northeastern part of the state. And like I said, I am in Monroe. The ones that I have done have been in that part of the state.

THE COURT: Is that the same part that we are talking about here?

THE WITNESS: No. sir. That is the northwestern part.

THE COURT: All right. Mr. Thornton told me that yesterday. Were you here yesterday?

THE WITNESS: Yes, sir.

THE COURT: Did you hear the testimony that there is a Louisiana state law that says that you can't modify or cut across precinct lines?

THE WITNESS: Yes, sir.

THE COURT: Under Louisiana state law in order to accomplish and establish a redistricting plan?

[121]

THE WITNESS: Yes sir. I have a copy of the law.

THE COURT: How many times have you had to do that in the course of your work, cut across or split up a precinct, an existing precinct line?

THE WITNESS: In order for School Boards, I have done it three times.

THE COURT: All right.

THE WITNESS: But for municipalities I would have to count them up. I would say about five or six times.

THE COURT: And the same Act 925 applies to municipalities as it does to School Boards, doesn't it?

THE WITNESS: I don't think it does.

THE COURT: Or does it?

THE WITNESS: I don't think that it does.

THE COURT: All right. What about Police Juries?

THE WITNESS: No, sir. I think that it only applies to School Boards, and in large Police Juries, it is a technical question or interpretation as to are they splitting or creating precincts, because once they do the splitting in—

THE COURT: Who is they?

THE WITNESS: The Police Juries. Once a Police Jury in its own reapportionment effort splits precincts and then by legal description, and by mapping, and by ordinance creates this new plan, then they have created new precincts. [122] So they have split, but they create at the same time. I hope that I am making myself clear.

Testimony of Appellant-Intervenors' witness Thelma Harry - Cross Examination by Appellee [132]

BY MR. THORNTON:

- Q. Ms. Harry, how many seats do you believe that the black [133] community should have on the Bossier Parish School Board?
- A. I would like to see them have three.
- Q. All right. And why do you think that they should have three?
- A. Because there are twelve now, and if you have three, we could depend on at least two to get some of our concerns through.

THE COURT: Two out of twelve would be able to do it?

THE WITNESS Well, I want a back-up system.

# BY MR. THORNTON:

- Q. Do you think that the seats should have any relationship to the black proportion of the population?
- A I do.
- Q. Have you been told that by anyone?
- A. No. That is my own function.

. . . . .

Testimony of United States Government's witness Johnny Gipson—Cross Examination by Appellee [138]

BY MR. THORNTON:

Q. Wait a minute, let me finish my question for the record. On the School Board, how many seats do you think that the black community ought to have? Now go ahead.

A. At least two, based on the population given, about two.

[139]

Q. Based on what, sir?

A. On the population, two.

Q. The percentage of blacks of the population?

A. Yes.

Testimony of United States Government's witness Jeffrey Dewayne Darby—Cross Examination by Appellee

[145]

### BY MR. THORNTON:

Q. Mr. Darby, how many seats do you think that the black community deserves to have under the Voting Rights Act on the Bossier Parish School Board?

- A. Sir, unrealistically I wish that we had six. But realistically, two.
- Q. And why two?
- A. To represent the population of Bossier Parish, the minority population.
- Q. Because that is their proportion to the entire population?
- A. (Nodding head.)
- Q. You have to speak out, sir.
- A. Yes, sir.
- Q. Mr. Darby, remind me, I couldn't find it right quickly. When did you run for the City Council?
- A. 1989.
- Q. And you won that seat, did you not?
- A. Yes, sir.
- Q. Was that from a predominantly white district?
- A. Yes, sir, it was.
- Q. What was the racial composition of that district?

- A. Approximately twenty-two percent minority, and the rest majority.
- Q. Seventy-eight or something like that?
- A. Um-hum.
- Q. And how many votes did you win by?
- A. Approximately thirty votes.
- Q. Did you make a race issue?
- A. No, sir.
- Q. Did you make—as an issue did you make the concerns, or what we would call the real issues of the election a part of your campaign?
- A. I am not understanding your question.
- Q. Well, I am not saying it very well, either. The issues of the campaign, were they—other than racial, I mean what the community ought to do, what the Police Jury ought to do about the problems, the sort of issue, is that what you ran on?
- A. Yes, sir, pretty much.
- Q. Okay. And in the meantime, after you had been elected, but before you ran again, the City Council changed their districts, did they not?
- A. Yes, sir.
- Q. That was after the Police Jury had changed its districts?
- A. Yes, sir.

[147]

- Q. And you were not, I think, happy with the district which—or which was drawn around your residence?
- A. This is correct.

- Q. But you ran and you lost, did you not?
- A. Yes, sir.
- Q. Lost to what, Mr. Swayer [sic]?
- A. Right.
- Q. Who was white?
- A. Yes, sir.
- Q. And how many votes did you lose by?
- A. Between fifty and fifty-eight.

Testimony of United States Government's witness Dr. Richard L. Engstrom—Cross Examination by Appellee [151]

### BY MR. THORNTON:

- Q. You have told us in your declaration what methodology you used to come to the conclusions that you came to, and the conclusions appear to be, sir, that in your opinion people in Bossier Parish vote by race, is that correct?
- A. I believe that the conclusion is that in the election[s] that I have studied, there is evidence that voters divide along racial lines.
- Q. Okay. I stand corrected. Is that a fair statement, what you are telling us?
- A. In the elections in which I was—I believe I was able to determine candidates of choice, that tends to be the case, yes.
- Q. Okay. I want to ask you some questions about this study that you made of Bossier Parish. How many times have you been to Bossier Parish?
- A. Oh, I don't know the total number, but it wouldn't be very many.

THE COURT: What do you mean by that?

THE WITNESS: Maybe two or three times, not connected to the study.

[152]

THE COURT: What did you do there?

THE WITNESS: Went to a famous barbecue restaurant I remember the last time.

THE COURT: In Shreveport?

THE WITNESS: In Bossier City. I was in Shreveport and specifically went to Bossier City for barbecue. I did not go to Bossier Parish for the purpose of the study, and I am from New Orleans, so I am not up there too often.

### BY MR. THORNTON:

- Q. Of any of the political contests that form a part of your study, I want to ask you some questions about them. Did you ever talk to any of the candidates?
- A. For the purpose of the study?
- Q. Yes?
- A. No.
- Q. Did you ever make a study of what the issues of the political -

THE COURT: Wait a minute, you didn't get an answer to the first question. Did you ever talk to the candidates?

MR. THORNTON: I think he said no.

THE COURT: Oh, I didn't hear.

THE WITNESS: Not for the purpose of the study. I have met some since and I have talked with them, but not prior to preparing this, nor for the purpose of preparing this study.

[153]

THE COURT: All right. I am sorry. I didn't hear you.

#### BY MR. THORNTON:

- Q. Do you know what the issues, campaign issues were, in any of those elections that you have talked about?
- A. No, I do not.
- Q. Did you make any study of what kind of campaign organization each of the candidates might have put together?
- A. No, I did not.
- Q. Did you have any idea of how much money they might have had in their political coffers to get across their programs?
- A. No, I did not.
- Q. Do you happen to know whether any of them had debates at a public forum and a face-to-face confrontation with the public?
- A. No, I do not.
- Q. Did you happen to know anything about the backgrounds of any of those candidates in terms of political experience or education?
- A. Not for the purpose of assessing racial divisions and voter candidate preferences, no.
- Q. All right. Ought those factors that I have asked you about, and other factors, don't they sometimes have some sort of impact on the outcome of political campaigns?
- A. There are all sorts of things that can have an impact on [154] the outcome of political campaigns. I was addressing a specific research question, did African

American voters and non-African American voters in these elections, in which they were given a choice, between or among African American and white candidates, have different candidate preferences, and to answer that question, I don't need to do all of these other things that you are asking me about.

- Q. All right, sir. Tell me this, then. Have you ever examined any parish in Louisiana, or any county anywhere in the United States, in which racial preference doesn't have some impact on the outcome of the election?
- A. I can't recall doing—I mean doing an analysis of one in which there wasn't some impact, in which voters didn't divide along racial lines, certainly, to some extent.
- Q. You have a doctor of philosophy in the field of political science, do you not?
- A. That is correct.
- Q. And so within your area of opinion, do you have any benchmark in which you can compare Bossier Parish with any other parish or county as to whether racial preference affects the outcome of political campaigns?
- A. Well, I haven't been asked to make that comparison, so I haven't come up with a benchmark, and I haven't even thought about what the benchmark might be if I needed one.
- Q. Well, if other parishes and other counties allowed [155] racial preference to have impact on election results, and you tell me that Bossier also has, how have we advanced human knowledge by that fact?

- A. Well, I don't know if we have advanced human knowledge through my study. It may be very well that the people in the audience find that I have documented the obvious in this analysis, that African American voters in Bossier Parish vote for African American candidates usually when given that choice, and white voters do not. I mean I don't know that I have advance knowledge, but those are the results of my studies.
- Q. But you don't know any other area that doesn't have a certain amount of that, do you?
- A. Well, I don't know what you mean by a certain amount of that, and I haven't studied all areas. Usually when I do these types of analyses, it is in the areas in which there are voting rights issues. So it is not uncommon to find this. In fact usually this is the case.
- Q. Well, you are a political scientist. Isn't it true that sometimes Catholics won't vote for Protestants?
- A. Excuse me, Catholics will vote for Protestants?
- Q. I say-listen to me, Doctor.
- A. Okay.
- Q. Isn't it true that in—just in your experience, and certainly in your area of academic excellence, isn't it [156] sometimes true that Catholics don't vote for Protestants, or Protestants don't vote for Catholics?
- A. Oh, I suppose that that is sometimes true. However, not anywhere to the extent that we have racial divisions. Race is the major demographic variable in American politics.
- Q. Everywhere —
- A. There is no other division in American politics that even comes close to it.

Q. Everywhere -

THE COURT: Did you ever hear of Mayor Daley

in Chicago?

THE WITNESS: Me?

THE COURT: Yes.

THE WITNESS: Have I heard him?

THE COURT: Have you ever heard of him, I said?

THE WITNESS: Senior or junior? The current one or the previous one? I have heard of both.

THE COURT: Both.

THE WITNESS: Okay.

THE COURT: Did you ever hear of a man named Boss Hague in Jersey City, New Jersey?

THE WITNESS: Yes.

THE COURT: Did you ever hear what used to happen the Sunday before elections in every Catholic parish in Jersey City?

[157]

THE WITNESS: Well, I don't know for sure, but I assume that there was probably a visit to the church.

THE COURT: I said in every Catholic parish?

THE WITNESS: No.

THE COURT: It was a visit to the church. Did you ever hear what happened in those churches?

THE WITNESS: I guess that I have not heard that.

THE COURT: You haven't, and you have a Ph.D. from the University of Kentucky? No wonder they didn't win the basketball tournament this year. I just

thought of those two examples as a result of his questions. You have not heard of that kind of discrimination?

THE WITNESS: No. I mean I don't know what happened at Catholic parishes a week before elections, or the Sunday before elections in Jersey City, no.

THE COURT: You don't know anything about—

THE WITNESS: I am fairly familiar with Chicago, but —

THE COURT: What happened there?

THE WITNESS: When, before elections?

THE COURT: Yes. What happened in 1968 there, or late 1960 there?

THE WITNESS: I don't recall what happened in 1960.

THE COURT: All right. I was thinking about the presidential election in 1960.

[158]

THE WITNESS: Oh,

THE COURT: You are a political scientist.

THE WITNESS: Well, I mean—I assume at that point you are talking about late election returns being reported.

THE COURT: I am talking about the same subject that Mr. Thornton is asking you about, sir.

THE WITNESS: Whether Catholics vote for Protestants, or whether there are times when they don't? I mean—

THE COURT: Well, the question is there. I am not going to restate the question for you, sir. You either answer it or you don't answer it. I don't care. You do or don't.

THE WITNESS: Well, I thought you were asking if there were times when Catholics don't vote for Protestants, and I said that I suspect that that can be the case.

THE COURT: You don't know of any instance though, is that what you are saying?

THE WITNESS: When Catholics didn't vote for Protestants? Catholics voted for Kennedy in 1960, but not to the percentage, I don't believe, that we generally find African Americans voting for African Americans, nor were Protestants as opposed as we usually find along racial lines. I still maintain that race is a far more serious demographic [159] division in American politics than religion.

THE COURT: All right, sir, thank you. I hear your opinion.

# BY MR. THORNTON:

# Q. Doctor Engstrom -

THE COURT: Please don't misunderstand me. The court has no opinion on this. I am just asking you for your knowledge.

### BY MR. THORNTON:

Q. As a political scientist, do you have an opinion as to whether or not separating races and focusing on the differences, and assigning black majority and white majority districts on the basis, say, of proportion in the population, do you have an opinion as to whether that

ameliorates and eases racial hostility, or would you think that it might increase or exacerbate hostility?

A. I believe that over time, if it provides African Americans with an opportunity to elect candidates of its—of their choice, I think that it will ameliorate it. I think that as we see African Americans elected to public office, and serving in public office, some of the fears of white voters will recede, and the horrible things that they may expect to result from the elections of blacks, at least among some white voters, will recede into the background, and we will probably, at that point, hopefully in the future, begin [160] to have elections that are driven less by race.

Testimony of United States Government's witness Dr. Richard L. Engstrom—Redirect Examination by Appellants

[166]

#### BY MS. HUME:

Q. Doctor Engstrom, when Mr. Thornton was asking you about whether you conversed with the candidates, and visited the parish, knew anything about the campaign issues, is it a standard practice in your area of expertise and its statistical methodology in analyzing electoral behavior to look at these kinds of factors in your study?

A. It would depend on the research question being addressed. If one is trying to do a causal analysis of why voters vote the way that they do, then one would certainly go on and look at other variables.

But if one is simply addressing an empirical question, do African American voters and non-African American voters have different candidate preferences, then that is not the appropriate analysis.

You simply look at the voters, and the way that the votes have been cast, and using the best available data that you can obtain, see if there are indications of whether you can identify those candidate choices, and whether they are different.

Testimony of Appellant-Intervenors' witness William S. Cooper—Cross Examination by Appellee [177]

# BY MR. THORNTON:

- Q. Now listen to me very carefully. In Cooper one and Cooper two, was your motive in drawing those districts as you drew them, and splitting the precincts as you have described, were you trying to draw it in such a way that there would be two majority black districts?
- A. I was asked to assess whether or not it was possible to create two majority black districts using traditional redistricting criteria, and yes, that was the result.
- Q. That was your instructions?
- A. Right.
- Q. All right.

THE COURT: What are the traditional criteria in [178] your view?

THE WITNESS: Well, in my opinion the three fundamental criteria are one person one vote, making sure that the deviation for a particular district does not exceed five percent, assuring that a district is contiguous. In other words, that all pieces are joined together.

And finally I think in an area where there is a significant minority population, you have to follow the Voting Rights Act and produce a majority black district, providing that it can be done. There are places where it cannot be done, but in the case of Bossier Parish I believe that it could be done there. THE COURT: Is there anything about compactness?

THE WITNESS: Compactness is a very fuzzy term. I try to make the district as shapely as possible, but in point of fact you are frequently dealing with oddly shaped jurisdictional boundaries, oddly shaped municipal our county boundaries, I should say, oddly shaped precincts.

The distribution of population can be kind of unusual, so that it is really very, very difference to look at a plan and signal out a district and say that it is not compact or that it is compact without knowing a little bit more about what is beneath the lines so to speak.

THE COURT: So the court's use of the words compactness are not necessarily correct?

[179]

THE WITNESS: Well, I think that it is laudable goal, and I sort of know what compactness is, as we sort of know what beauty is and truth is, but it is very hard to define, and ultimately, I attempt to make a district as shapely as possible, as square and neatly bounded.

But I don't—I don't employ, for example, a measure of compactness to determine whether or not a district meets a certain compactness standard, nor do most governing bodies that I encounter. It is highly unusual to ever see a jurisdiction—in fact, I have never seen a jurisdiction produce a compactness measure as a part—as part of their redistricting process at the local level anyway.

\* \* \* \* \*

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A. ESTABLISHMENT AND
ORGANIZATION

# § 52. Election and qualification of members; term of office

A. There shall be elected by the qualified voters of each parish police jury ward, or the equivalent thereof, of each parish of the state a member of the school board of the parish for each police juror in said ward, or the members of a parish school board shall be elected by the qualified voters in accordance with the school board reapportionment plan then in effect as authorized by law, or the members of a parish school board shall be elected in accordance with any special law applicable to the board, as the case may be. Members of parish school boards shall be elected at the congressional elections. Members elected in 1986 and thereafter shall serve four-year concurrent terms beginning January 1 following their election.

\* \* \* \* \*

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A-1. REAPPORTIONMENT AND
REORGANIZATION

[The following is from the 1982 Main Volume:]

§ 71.3. Procedure for accomplishing reapportionment; special election districts; effective date of same

A. Each of the parish and city school boards shall use the federal census of 1970 as the basis upon which to accomplish reapportionment, provided however, that each of said school boards may authorize the taking of a special census to use as a basis for reapportionment. To this end, each of said school boards may employ qualified firms to take such special census, and may employ such other consultants, attorneys, etc. as it deems desirable in order to assist such board in such reapportionment.

B. Each of said boards, after determining the number of member of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable, which districts need not be coterminous with, nor have any relation to, the wards or precincts that may be created by the police jury or cities or towns within and for said parish or city, but any such special school board election districts created as a result of this Subpart must be compact and contiguous. The board may provide that all or part of its members shall be elected from such districts and

may provide that one or more of its members may be elected at large from each of such districts.

C. Repealed by Acts 1980, No. 285, § 9, eff. July 14, 1980.

D. The special school board election districts provided for herein shall be for the purpose only of electing school board members and shall not be for the purpose of levying taxes or issuing bonds. The creation of such special election districts shall not affect existing tax or bonding districts and same shall remain in full force and effect as otherwise provided by law.

Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.; Acts 1975, No. 432, § 1.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A-1. REAPPORTIONMENT AND
REORGANIZATION

[The following is from the 1995 Pocket Part:]

## § 71.3 Procedure for accomplishing reapportionment, special election districts; effective date of same

[See main volume for A]

B. Each of said boards, after determining the number of members of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable. These districts need not be conterminous with the wards that may be created by any governing authority, but any such special school board election districts created as a result of this Subpart shall be compact and contiguous. After January 1, 1984, the boundaries of such election districts shall contain whole election precincts established by the parish governing authority under R.S. 18:532 or 532.1. The board may provide that all or part of its members shall be elected from such districts and may provide that one or more of its members may be elected at large from each of such districts.

Amended by Acts 1982, No. 558, § 1, eff. July 22, 1982.

#### [See main volume for C and D]

E. (1) The boundaries of any election district for a new apportionment plan from which members of a

school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1.

- (2)(a) Notwithstanding the provisions of R.S. 17:71.3(E)(1) or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may, in the creation of its reapportionment plan, divide a precinct into portions which are bounded by visible features which are census tabulation boundaries. No such precinct shall be divided into more than two school boards districts. No school board district shall contain more than two divided precincts.
- (b) The provisions of this Paragraph shall be applicable only in cases in which the number of members of the school board is not equal to the number of members of the parish governing authority of the parish in which the school board is domiciled.
- (c) The provisions of this Paragraph shall not be constructed as authority for a school board which has adopted or accomplished reapportionment or is able to reapportion itself using whole precincts to divide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.
- (d) The provisions of this Paragraph shall become null and void on December 31, 1992, unless a school board receives an objection letter to its reapportionment plan from the Department of Justice. In such event the school board shall use the provisions of this Paragraph to satisfy the objections of the Department of Justice if said objections would require a precinct to

be divided and the provisions of this Paragraph shall be null and void after such reapportionment is complete.

- (3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may create school board election districts that subdivide one or more precincts. No such precinct shall be subdivided into more than two school board districts. No school board district shall contain more than two subdivided precinct portions in addition to any whole precincts contained therein.
- (b) The provisions of this Paragraph shall be applicable only in parishes having a population of ten thousand or fewer according to the latest decennial census and in which there are fifteen or fewer election precincts.
- (c) The provisions of this Paragraph shall not be construed as authority for school board which is able to reapportion itself using whole precincts to subdivide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.
- (d) The provisions of this Paragraph shall become null and void on December 31, 1993, provided that if the United States attorney general objects to the reapportionment plan of a school board operating under the provisions of this Paragraph, the school board may act under the provisions of this Paragraph to create a reapportionment plan to which the attorney general interposes no objection, if the plan would require one or more precincts to be subdivided. Following the

adoption of such plan, the provisions of this Paragraph shall be null and void.

Added by Acts 1992, No. 925, § 1. Amended by Acts 1993, No. 286, § 1, eff. June 2, 1993.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 18. LOUISIANA ELECTION CODE
CHAPTER 5. PRIMARY AND GENERAL ELECTIONS
PART II. ELECTION OFFICIALS
SUBPART A. GENERAL PROVISIONS

## § 425.1. Consolidation of polling places; reduction of voting machines and election officials

A. Notwithstanding the provisions of R.S. 18:424 and 425 or any other provision of law to the contrary, in an election, including the election of any public official, where more than one polling place is within the same location, the parish board of election supervisors may consolidate polling places in that location for that election and may reduce the number of voting machines to be used in the election below the number fixed by R.S. 18:1363 and, in such case, shall notify the parish custodian of voting machines and the commissioner of elections of the number of machines to be prepared and delivered for the polling places so consolidated.

B. When the parish board of election supervisors consolidates polling places as authorized by Subsection A of this Section, it shall appoint a commissioner-incharge to serve at each such consolidated polling place and may reduce to not less than two the number of commissioners and alternate commissioners to be appointed to serve at each such polling place.

Added by Acts 1986, No. 705, § 1.

# WESTS LOUISIANA STATUTES ANNOTATED LOUISIANA REVISED STATUTES (1995) TITLE 18. LOUISIANA ELECTION CODE CHAPTER 5. PRIMARY AND GENERAL ELECTIONS PART V. VOTERS AND VOTING SUBPART B. PLACES FOR VOTING

#### § 532. Establishing of precincts

- A. Subject to the provisions of R.S. 18:532.1 and 1903, the governing authority of each parish shall establish precincts, define the territorial limits for which each precinct is established, prescribed their boundaries, and designate the precincts. The governing authority of each parish shall be ordinance adopt the establishment and boundaries of each precinct in accordance with the timetable as set forth herein and in accordance with R.S. 18:532.1.
- B. (1) Each precinct shall be a contiguous, compact area having clearly defined and clearly observable boundaries coinciding with visible features readily distinguishable on the ground such as designated highways, roads, streets, rivers, or canals, except where the precinct boundary is coterminous with the boundary of a parish or an incorporated place when the boundaries of a single precinct contain the entire geographic area of the incorporated place.
- (2) No precinct shall be wholly contained within the territorial boundaries of another precinct, except that a precinct which contains the entire geographical area of an incorporated place and in which the total number of registered voters at the last general election was less than two hundred fifty may be so contained.
- (3) No precinct shall contain more than two thousand two hundred registered voters within its geo-

graphic boundaries. Within thirty days after the completion of each canvass, the registrar of voters of each parish shall notify the parish governing authority of every precinct in the parish which contains more than two thousand two hundred registered voters within its geographic boundaries. Within sixty days of such notification, the parish governing authority shall divide such precincts by a visible feature in accordance with R.S.18:532.1.

C. Each person governing authority shall provide and maintain at all times a suitable map showing the current geographical boundaries with designation of precincts and a word description of the precinct geographical boundaries. Each parish governing authority shall send a copy of each map, with description attached, to the registrar of voters, the secretary of state, and the commissioner of elections. The map may be composed of one or more sheets but each sheet shall not exceed three feet by four feet. The map shall include all existing roads, streets, railroads tracks, and drainage features but shall not include underground utility lines, land use and zoning symbols or shadings, symbols for vegetation cover, topographic contour lines, and similar items that obscure the basic street pattern and names. All features, names, titles, and symbols on the map shall be clearly shown and legible. The map sheet of the entire parish shall be on a scale of one inch equals one mile to one inch equals two miles. Map sheets of each incorporated place within the parish shall be on a scale of one inch equals eight hundred feet to one inch equals sixteen hundred feet. Each map sheet shall indicate the date of the base map or the date of last revision. Wherever the boundaries of a precinct or incorporated place are coterminous, they shall be clearly indicated at such.

- D. The parish governing authority shall also furnish, a map clearly indicating the boundaries of each parish governing authority district, school board district, special election district, representative district, and senate district.
- E. (1) In complying with the provisions of this Section for the establishment of precincts and the prescription of their boundaries, each parish governing authority and registrar of voters shall coordinate with the secretary of the Senate and the clerk of the House of Representatives, or their designees, pursuant to their authority to submit a plan for census data for reapportionment under the provisions of Chapter 13 of Title 18 of the Louisiana Revised Statutes of 1950, and shall adopt or adjust precinct boundaries as may be necessary to comply with this Section.
- (2) Each parish governing authority shall by ordinance adopt a proposal for the establishment or adjustment of precinct boundaries, in compliance with this Section, no later than June 15, 1986, provided that any establishment of a precinct or adjustment of a precinct boundary to comply with this Section shall be effective for the following purposes at the following times:
- (a) Not later than January 1, 1990, for the purpose of establishing block boundaries for the 1990 federal decennial census.
- (b) Not later than forty-five days prior to the opening date for qualifying as a candidate for any election held at the 1991 gubernatorial primary election, for all purposes. Within fifteen days after the adoption of the ordinance, the parish governing authority shall

send to the secretary and the clerk a certified copy of the ordinance and a copy of a map showing the new boundaries together with a written description of such boundaries.

- (3) If any parish governing authority fails to comply with the provisions of this Section by June 15, 1986, the secretary of the Senate and the clerk of the House of Representatives, or their designees, shall immediately notify the attorney general of such noncompliance. The attorney general shall, upon receipt of such notice, in accordance with R.S. 18:537 institute an action against said governing authority to compel compliance with this Section.
- (4) Notwithstanding the provisions of R.S. 18:532.1(A) and (B) or any other law to the contrary, the proposed precinct boundaries submitted to the United States Bureau of Census by a parish through the secretary of the Senate and the clerk of the House of Representatives or their designees, and approved by the Bureau of the Census as block boundaries for the 1990 Census shall be the precinct boundaries of any parish in which the parish governing authority has failed to adopt by ordinance on or before December 31, 1988 a proposal for the establishment or adjustment of precinct boundaries as required by this Section. The precinct boundaries established pursuant to the provisions of this Paragraph shall be effective as provided in R.S.18:532(E)(2).

Amended by Acts 1982, No.559, § 1, eff. July 22, 1982; Acts, 1985, No. 670, § 1, eff. July 16, 1985; Acts 1986, No. 286, § 1, eff. June 30, 1986; Acts 1988, No. 329, § 1; Acts 1988, No. 403, § 1, eff. July 10, 1988; Acts 1990, No. 629, § 1; Acts1992, No. 788, § 1, eff. Jan. 1, 1993; Acts 1992, No. 803, § 1.

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#### § 532.1 Changing precinct boundaries

- A. The parish governing authority shall have authority, in accordance with this Section, to change the configuration, boundaries, or designation of an election precinct. Any change so determined shall be adopted by ordinance of the parish governing authority. Within fifteen days after adoption of the ordinance, the parish governing authority shall send to the secretary of state a certified copy of the ordinance and a copy of the map showing the new precinct boundaries and designations together with a written description of such boundaries. The parish governing authority shall comply with the provisions of R.S. 18:941 when changing precinct boundaries.
- B. After June 15, 1986, a parish governing authority shall only change a precinct by dividing the precinct into two or more precincts except:
  - (1) Repealed by Acts 1990, No. 629, § 2.
  - (2) When in order to make it more convenient for voters to vote, or to facilitate the administration of the election process, or to accomplish reapportionment, it becomes necessary to consolidate all or part of a precinct with adjacent precincts, a part or parts may be consolidated but only when the parts that are joined are in the same voting district.
- (3) Any establishment, division, or consolidation of precincts as provided in Paragraphs (1) and (2) herein shall be considered a change in precincts boundaries and shall be subject to the requirements of this Section.
- C. (1) The parish governing authority shall comply with the provisions of R.S. 18:532(A), (B), and (C) when

changing any precinct boundary. Prior to January 1, 1993, any precinct boundary resulting from an establishment of a precinct or precincts or change in precinct boundary shall coincide with a visible feature which is a tabulation boundary depicted on United States Bureau of the Census maps prepared for the 1990 federal decennial census. After December 31, 1992, any precinct boundary resulting from an establishment of a precinct or precincts or change in precinct boundary shall coincide with a visible feature depicted on a base map that will be used by the United States Bureau of the Census to determine visible tabulation boundaries for the federal decennial census.

- In determining features to be used as precinct boundaries, the parish governing authority shall consult with the secretary of the Senate and the clerk of the House of Representatives or their designees. The parish governing authority shall submit proposed changes in precinct boundaries to the secretary and the clerk or their designees on United States Bureau of the Census maps prepared for the 1990 federal decennial census and, where practicable, by electronic medium. No change in a precinct boundary may be made by the parish governing authority without prior review and approval by the secretary and the clerk or their designees, except as provided in this Subparagraph. Such review shall consist of a determination whether the proposed precinct change coincides with a visible feature depicted on a base map that will be used by the United States Bureau of the Census to determine visible tabulation boundaries for the federal decennial census.
- (b) The secretary of the Senate and the clerk of the House of Representatives or their designees shall send

a report of the findings resulting from the review to the parish governing authority within forty-five days after the receipt of the proposed precinct changes. If the secretary of the Senate and the clerk of the House of Representatives or their designees fail to respond within forty-five days after the receipt of the proposed precinct changes, the proposed visible feature for precinct boundaries shall be deemed to be approved by the secretary of the Senate and the clerk of the House of Representatives or their designees.

- (3)(a) In addition to the requirements of Paragraph (2) of this Subsection when the proposed precinct change involves a consolidation authorized by Paragraph B(2) of this Section, prior to adoption by ordinance, the parish governing authority shall submit proposed changes of the consolidation to the commissioner of elections. No change in a precinct consolidation may be made by the parish governing authority without prior review and approval by the commissioner of elections, except as provided in this Subparagraph. Such review shall consist of a determination whether the proposed consolidation of the precincts establishes a precinct or precincts where all parts of each proposed new precinct are in the same voting district.
- (b) The commissioner of elections shall send a report of the findings resulting from the review to the parish governing authority within forty-five days after the receipt of the proposed precinct changes. If the commissioner of elections fails to respond within forty-five days after the receipt of the proposed precinct consolidations, the proposed consolidations shall be deemed to be approved by the commissioner of elections. No precinct shall be consolidated until all local governing authorities and the parish or city school board within

the area affected by the consolidation have completed redistricting and been precleared by the United States Department of Justice.

- D. In accordance with R.S. 18:1903, on and after January 1, 1989, no election precinct shall be created, divided, abolished, or consolidated, or the boundaries thereof otherwise changed between January first of any year which last digit is nine and December thirty-first of any year which last digit is zero, unless ordered by a court of competent jurisdiction.
- E. (1) A precinct shall not be changed, and no precinct shall be established or altered in any way as a result of annexation, alphabetical division by voter surname, or otherwise during the period commencing on the date the qualifying period opens and ending on the date of the general election.
- (2) For an election which is exclusively for bonds, taxes, and other propositions or questions and for no other kind of election, a precinct shall not be changed during the period commencing on the forty-six day prior to the election and ending on the date of the election.
- (3) No precinct change that is made prior to the date the qualifying period opens or, in the case of an election exclusively for bonds, taxes, and other propositions or questions, prior to the forty-sixth day before the election shall become effective for those elections, respectively, unless the information required in Subsection A herein, including a statement of no objection to the change from the United States attorney general, is received by the secretary of state prior to the date the qualifying period opens or prior to the forty-sixth day before the election, as the case may be.

- F. Within fifteen days after the adoption of the ordinance as provided in the Section, the parish governing authority shall send to the secretary of the Senate and the clerk of the House of Representatives as well as the secretary of state and commissioner of elections a certified copy of the ordinance and a copy of a map showing the new precinct boundaries together with a written description of such boundaries.
- G. Repealed by Acts 1993, No. 418, § 2, eff. Jan. 1, 1994.
- H. The provisions of this Subsection shall supersede the provisions of R.S. 18:532.1(A), (B), and (D), and R.S. 18:1903, and any other law to the contrary.
- (1) The precinct boundaries submitted to the United States Bureau of the Census by a parish through the secretary of the Senate and the clerk of the House of Representatives or their designees, and approved by the Bureau of the Census as block boundaries for the 1990 Census, shall not be divided, abolished, consolidated, or the boundaries otherwise changed until after December 31, 1992, unless ordered by a court of competent jurisdiction.
- (2) Notwithstanding the provision contained in R.S. 18:532.1(H)(1), if a parish is unable to meet applicable state and federal guidelines in the creation of its reapportionment plan, such parish may divide a precinct into two or more precincts by a visible feature which is a census tabulation boundary during the time period of April 1, 1991 through May 15, 1991.
- (a) Such parish shall include such precinct changes in its ordinance defining such reapportionment plan.
- (b) A certified copy of the ordinance including any such precinct changes and reapportionment plan must

be sent to the secretary of state, the secretary of the Senate, the clerk of the House of Representatives, and the registrar of voters of the parish within fifteen days after the adoption of the ordinance.

- (c) In the event that the Department of Justice objects to a parish reapportionment plan, such parish may divide a precinct into two or more precincts by a visible feature which is a census tabulation boundary in order to satisfy said objections of the Department of Justice.
- (d) Such precincts shall not be divided, abolished, or consolidated or the boundaries otherwise changed during the time period of September 1, 1991 through December 31, 1992.

Added by Acts 1982, No. 559, § 1, eff. July 22, 1982. Amended by Acts 1985, No. 670, § 1, eff. July 16, 1985; Acts 1986, No. 286, § 1, eff. June 30, 1986; Acts 1987, No. 831, § 1, eff. Jan. 1, 1988; Acts 1988, No. 329, § 1; Acts 1988, No. 909, § 1; Acts 1990, No. 288, § 1, eff. July 5, 1990; Acts 1990, No. 629, § 1, Acts 1992, No. 803, § 1; Acts 1993, No. 418, § 1 eff. Jan. 1, 1994.

#### WESTS LOUISIANA STATUTES ANNOTATED LOUISIANA REVISED STATUTES (1995) TITLE 18. LOUISIANA ELECTION CODE CHAPTER 8-A. ELECTION EXPENSES

# § 1400.1 Election costs paid by secretary of state; governing authorities; reimbursement

- A. The cost of ballots and election materials used in gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the secretary of state for that purpose, except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of the cost of ballots and election materials. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.
- B. (1) The cost of ballots and election materials used in any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the secretary of state for that purpose:
  - (a) A state candidate, as defined in R.S. 18:452(1).
    - (b) A candidate for the state legislature.
  - (c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of

the criminal district or civil district court for Orleans Parish.

- (d) A candidate for the office of district attorney.
  - (e) A proposed constitutional amendment.
- (2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of the cost of ballots and election materials. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions, on the ballot within that local jurisdiction.
- C. (1) The cost of ballots and election materials used in any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of the office or the issue involved in such election.
- (2) In any special election called only by a local governing authority or only by a parish or city school board solely for the purpose of voting on a proposition under Chapter 6-A of this Title, a fee of five dollars per certificate and two dollars per page shall be paid to the secretary of state for recording the process verbal as required by R.S. 18:1293.
- (3) To administratively facilitate the payment of costs as provided in this Subsection, the secretary of state may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the secretary of state, and all monies so

received by the secretary of state shall be remitted to the state treasurer. If more than one governing authority is involved in an election, the secretary of state shall prorate the reimbursable costs among the governing authorities as equitably as possible.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 783; § 1, eff. July 10, 1986; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

# § 1400.2. Election costs paid by commissioner of elections; governing authorities; reimbursement

A. The costs of publication of the location of polling places; of renting polling places; of drayage; of setting up voting machines; of compensating commissioners and deputy parish custodians; and of transmitting election returns for gubernatorial and elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the commissioner of elections for that purpose except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) The cost of publication of the location of polling places; or renting places; of drayage; of setting up voting machines; of compensating commissioners

and deputy parish custodians; and of transmitting election returns for any special election when any of the following appear or the ballot shall be paid by the state from funds appropriated to the commissioner of elections for that purpose:

- (a) A state candidate as defined in R.S. 18:452(1).
  - (b) A candidate for the state legislature.
- (c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.
- (d) A candidate for the office of district attorney.
  - (e) A proposed constitutional amendment.
- (2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.
- C. (1) The cost of publication of the location of polling places; of renting polling places; of drayage: of setting up voting machines, which cost shall be ten dollars per machine; of compensating commissioners and deputy parish custodians; and of transmitting elec-

tion returns for any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of office or issue involved in such election. Except as provided in Paragraph (2) of this Subsection, if more than one governing authority is involved in an election, a statement of such expenses shall be transmitted to each governing authority involved in the election and payment thereof shall be prorated among the governing authorities as equitably as possible.

(2) To administratively facilitate the payment of costs with respect to elections as provided in this Subsection, the commissioner of elections may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the commissioner of elections who shall remit all such funds to the state treasurer. If more than one governing authority is involved in an election, the commissioner of elections shall prorate its reimbursable costs among the governing authorities as equitably as possible.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 426, § 1; Acts 1986, No. 783, § 1, eff. July 10, 1986; Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, S 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

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- § 1400.3 Election expenses incurred by clerks of court and registrars of voters; payment by commissioner of elections; payment by governing authorities
- A. Election expenses incurred by clerk of court and registrars of voters for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the commissioner of elections for that purpose, except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.
- B. (1) Election expenses incurred by clerks of court and registrars of voters for any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the commissioner of elections for that purpose:
  - (a) A state candidate, as defined in R.S. 18:452(1).
    - (b) A candidate for the state legislature.
  - (c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.

- (d) A candidate for the office of district attorney.
  - (e) A propose constitutional amendment.
- (2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.
- (C)(1) Election expenses incurred by clerks of court and registrars of voters for any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of office or issue involved in such election. Except as provided in Paragraph (2) of this Subsection, if more than one governing authority is involved in an election, a statement of such expenses shall be transmitted to each governing authority and payment thereof shall be prorated among the governing authorities as equitably as possible.
- (2) To administratively facilitate the payment of costs with respect to elections as provided in this Subsection, the commissioner of elections may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the commissioner of elections, who shall remit all such funds to the state treasurer. If more than one governing authority is

involved in an election, the commissioner of elections shall prorate its reimbursable costs among the governing authorities as equitably as possible.

- (D) For the purposes of this Section, "election expenses incurred by registrars of voters" is defined and limited to the following:
- (1) Expenses incurred by a registrar of voters to pay for one or more temporary part-time clerical employees to perform election duties and responsibilities associated with his office as provided in this Title. Such employees shall be paid at an hourly rate established by the registrar at not to exceed that of a Voter Registration Specialist in the General Schedule at the entry level as specified in the classification and pay plan of the Louisiana Department of Civil Service.
- (2) Expenses incurred by a registrar of voters to pay a permanent employee below the level of chief deputy and confidential assistant to perform election duties and responsibilities associated with his office during other than normal hours of operation of his office.
- (3) Expenses of an extraordinary nature incurred by a registrar of voters for an election which have received prior approval of the commissioner of elections.
- (E) For the purpose of this Section, "election expenses incurred by clerks of court" is defined and limited to the following:
- (1) Actual expense incurred by a clerk of court to publish notices required by law in the official journal of the parish and, to insure maximum coverage, in any other journal of the parish or political subdivision thereof. Information contained in such notices shall be limited to that required by law. The commissioner of

elections shall prescribed the size of such notices which shall be uniform throughout the state.

- (2) Itemized expenses incurred by a clerk of court to conduct the general courses of instruction for commissioners as provide in R.S. 18:431(A) and the course of instruction for commissioners-in-charge as provided in R.S. 18:433(A).
- (3)(a) Documented expenses incurred by a clerk of court to perform or fulfill election duties imposed by law. For the purpose of this Paragraph, such expenses shall include the following:
- (i) Expenses for postage and office supplies used in connection with an election or used to fulfill an election duty imposed by law.
- (ii) Expenses for rental space and instructional paraphernalia to conduct schools of instruction for commissioners and commissioners-in-charge.
- (iii) Expenses for personnel used in connection with an election or used to fulfill an election duty imposed by law. Such expenses shall be itemized and reimbursement shall be authorized only for work not performed during regular office hours of the clerk of court.
- (iv) Incidental expenses incurred in conducting the general courses of instruction for commissioners and the course of instruction for commissioners-in-charge. Reimbursement for such expenses shall be limited to one hundred dollars per general commissioner school and one hundred dollars for the commissioner-in-charge school. Maximum reimbursement to a clerk of court for conducting such schools shall be limited to three handred dollars per calendar year and all reimbursements shall be deposited in the general fund of the clerk of court.

- (b) The commissioner of elections shall establish rules and regulations governing reimbursement for expenses set forth herein and may establish rules and regulations to add other categories of reimbursable expenses. All reimbursements shall be deposited in the general fund of the clerk.
- (4) Expenses of an extraordinary nature incurred by a clerk of court for an election which have received prior approval of the commissioner of elections.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 669, § 1; Acts 1986, No. 783, § 1, eff. July 10, 1986, Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 18. LOUISIANA ELECTION CODE
CHAPTER 5. PRIMARY AND GENERAL ELECTIONS
PART VII. FILLING OF VACANCIES
SUBPART C. LOCAL AND MUNICIPAL OFFICES

### § 602. Vacancies in certain local and municipal offices; exceptions

- A. When a vacancy occurs in the office of a member of a parish or municipal governing authority or a combination thereof, a mayor, or any other local or municipal office, except an office covered by Subsections B and C hereof and except the office of judge, state legislator, or marshal of a city or municipal court, and the office is filled by election wholly within the boundaries of a local governmental subdivision, the governing authority of the local governmental subdivision where the vacancy occurs shall, within ten days, appoint a person to fill the vacancy who meets the qualifications of the office. The presiding officer of the governing authority shall not be required to vote on such an appointment to be made by the governing authority of a local governmental subdivision to be made by the governing authority of a local governmental subdivision unless a tie vote occurs thereon, in which case he shall vote to break the tie; however, in no case shall the presiding officer vote more than once on the appointment.
- B. When a vacancy occurs in the membership of a city or parish school board, the remaining members of the board shall, within ten days, declare that the vacancy has occurred and proceed to appoint a person who meets the qualifications of the office to fill the vacancy. For the purposes of this Subsection, in addi-

tion to the definition of "vacancy" provided in R.S. 18:581(1), a "vacancy" in a city or parish school board office shall be deemed to have occurred when, in the case of a city school board, a member's residence no longer lies within the jurisdiction of the board or when, in the case of a parish school board, a member changes his domicile from the district he represents or, if elected after reapportionment, is domiciled outside the district he represents at the time he is sworn into office, any declaration of retention of domicile to the contrary notwithstanding.

- C. When a vacancy occurs in any of the following offices, the duties of the office shall be assumed by the person hereinafter designated: (1) district attorney, by the first assistant; (2) clerk of a district court, by the chief deputy; (3) coroner, by the chief deputy; (4) sheriff, by the chief criminal deputy, except that in a parish that has both a civil sheriff and a criminal sheriff. the civil sheriff by the chief civil deputy, and the criminal sheriff, by the chief criminal deputy, respectively; and (5) tax assessor, by the chief deputy assessor, except that in any parish having a board of assessors, that board shall, within ten days, appoint an interim assessor. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes affected shall, within ten days, appoint a person having the qualifications of the office to assume the duties of the office.
- D. If a vacancy is not filled within the time specified in Subsections A, B, or C herein, the governor shall fill the vacancy.
- E. (1)(a) If the unexpired term of an office covered by Subsection A, B, or C above is one year or less, the

person appointed to fill the vacancy or designated to assume the duties of the office shall serve for the remainder of the unexpired term.

- (b) If any member of a parish or city school board is removed or suspended from office pursuant to the provisions of R.S. 42:1411, except in the parish of Jefferson, the person appointed to fill the vacancy or to perform the official acts, duties, and functions of that office during the period of suspension shall be eligible in the next election as a candidate for the office to which he is appointed.
- If the unexpired term exceeds one year, the governing authority of the local government subdivision in which the vacancy occurs, or the school board when the vacancy occurs in its membership, or the governor when a vacancy occurs in the office of district attorney or in an office for which there is not a single governing authority or as provided in Subsection F. within ten days after the vacancy and shall specify in the proclamation, in accordance with R.S. 18:402, the dates on which the primary and general elections shall be held and, in accordance with R.S. 18:467, 467.1, and 468, the dates of the qualifying period for candidates in the special election. In selecting the dates for such special elections, the governing authority or school board as the case may be, may choose a gubernatorial or congressional election date, if such date is available within a year of the occurrence of the vacancy or may select an election date in accordance with R.S. 18:402. In the case in which the governor shall first choose a gubernatorial or congressional election date. If no such date is available within a year of the occurrence of the vacancy, the governor shall then select an election date

in accordance with R.S. 18:402. If the governing authority or school board fails to issue the proclamation.

- (b) Immediately thereafter the governing authority, the school board, or the governor, as the case may be, shall publish the proclamation in the official journal of each parish in which the election is to be held.
- (c) Within twenty-four hours after issuing the proclamation, the authority or authorities ordering the special election shall send a copy of the proclamation, by certified or registered mail, to the clerk of the district court for the parish in which the vacancy occurred. If the vacancy occurred in the parish of Orleans, the copy of the proclamation shall be so mailed to the clerk of the criminal district court. If the vacancy occurs in an office which affects more than one parish, a copy of the proclamation shall at the time be so mailed to the clerk of each of the parishes. A copy of the proclamation also shall be mailed to the secretary of state at the same time and in the same manner.
- (d) Within twenty-four hours after he receives the copy, the secretary of state shall notify all election officials having any duty to perform in connection with a special election to fill such vacancy, including the parish boards of election supervisors for the parish or parishes in which the vacancy occurred.
- (3) The special election shall be held, without the necessity of a call by the governor, except in the case of a vacancy in the office of district attorney. When a special election is required, the appointee or person designated to assume the duties of the office shall serve only until the successor is elected and takes office.
- (4) If the unexpired term of a municipal office covered by Subsection A is one year or more, but the

vacancy occurs within one year of the regular municipal primary election for that office, no special election will be called and the appointee shall serve for the remainder of the term of office.

- F. Whenever multiple vacancies in a local or municipal governing authority or in a school board covered by Subsection A or B of this Section reduce the membership of such governing authority or board below the number of total members required to constitute a quorum to conduct official business, the remaining members shall immediately inform the governor of the existence of the vacancies. Within ten days after he receives this notice, the governor shall make appointments to fill all the vacancies and shall issue a proclamation calling special elections to fill such vacancies if special elections are required under the provisions of this Section.
- G. The provisions of this Section shall apply to all local governmental subdivisions, including those operating under the provisions of a legislative charter, but shall not apply where the filling of a vacancy otherwise is provided for by the constitution or by the home rule charter or home rule plan of government of the affected local governmental subdivision. Such constitutional home rule plan provisions shall govern the filing of the vacancies.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A-1. REAPPORTIONMENT AND
REORGANIZATION

#### § 71.5. Reapportionment; reorganization

By resolution adopted pursuant to R.S. 17:71.4, each school board shall reapportion itself based upon each federal decennial census, or a special census as authorized by R.S. 17:71.3(A). Such resolution shall be adopted on or before December thirty-first of the second year following the year in which the population of this state is reported to the president of the United States for each decennial census, unless an election of the members of the school board is to take place in the second year after reporting of the decennial census, in which case, the resolution is to be adopted no later than March first of the second year after reporting of the decennial census. Reapportionment shall not reduce the term of any member who is then seated and elected. Each board shall submit its reapportionment plan to the United States Department of Justice no later than one hundred twenty days after adoption of the resolution pursuant to R.S. 17:71.4, as required by the Voting Rights Act of 1965, as amended, Title 42, Section 1973(a) of the United States Code and shall also submit a copy of such resolution by certified mail to the secretary of state.

# UNITED STATES CODE ANNOTATED TITLE 13. CENSUS CHAPTER 5—CENSUSES SUBCHAPTER II-POPULATION, HOUSING, AND UNEMPLOYMENT

#### § 141. Population and other census information

(b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

# Supreme Court Of The United States

No. 98-405

JANET RENO, ATTORNEY GENERAL, APPELLANT

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### BOSSIER PARISH SCHOOL BOARD

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with No. 98-406, George Price, et al., v. Bossier Parish School Board and a total of one hour is allotted for oral argument. The brief of the appellant is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. The brief of appellees is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. Rule 29.2 does not apply.

January 22, 1999

## Supreme Court Of The United States

No. 98-406

GEORGE PRICE, ET AL., APPELLANTS

v.

### BOSSIER PARISH SCHOOL BOARD

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with No. 98-405, Janet Reno, Attorney General v. Bossier Parish School Board and a total of one hour is allotted for oral argument. The briefs of the appellants are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. The brief of appellees is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. Rule 29.2 does not apply.

January 22, 1999

MAR 5 1999



CLERK

## In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

22

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

22.

#### BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

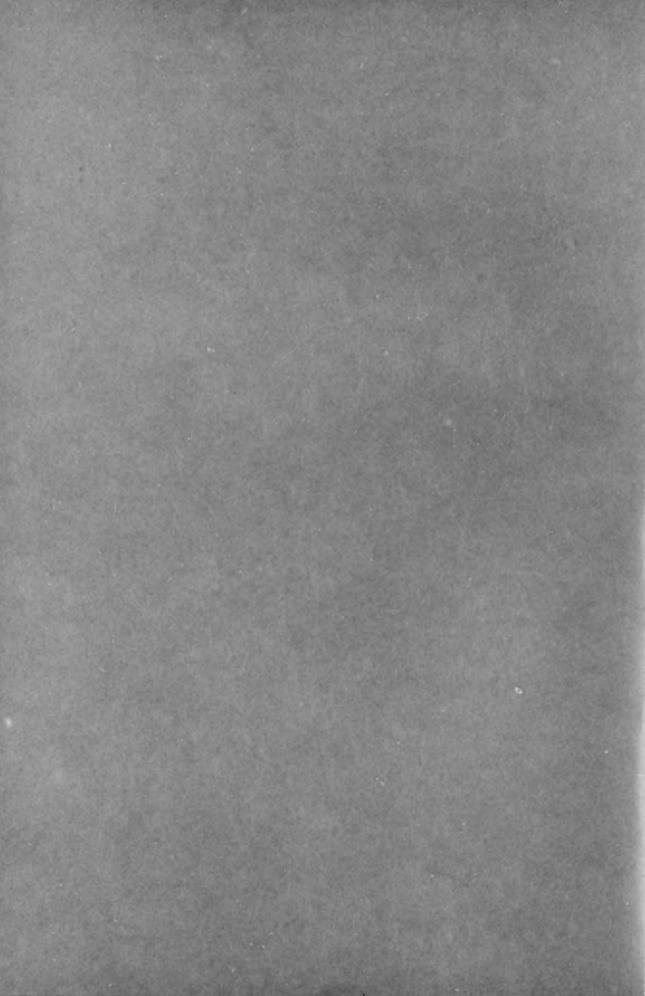
### JOINT APPENDIX (VOLUME 3)

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NOTICES OF APPEAL FILED: July 6, 1998 PROBABLE JURISDICTION NOTED: January 22, 1999

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	D.	Joint Stipulations	
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	F.	dated Aug. 30, 1993 Attorney General's letter denying	J.S. App. 233a
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### **COMPLAINANT'S EXHIBIT NO. 7**

Cooper Plan Which He Submitted at the Trial of the Knight case on August 19, 1994 (Cooper Plan No. 1)

BOSSIER PARISH POPULATION	86,088 77.862% WHITE 67,030	20.190% BLACK 17,381
NUMBER OF PRECINCTS 56		
PLAINTIFF PLAN SPLITS 32		
NUMBER OF REGISTERED VOTERS	38,350	
NUMBER OF REGISTERED BLACKS	6,010	15.67%
NUMBER OF REGISTERD ON BAFE	147	
NUMBER OF REGISTERED BLACKS	ON BAFB 35	
HOW LONG IS PLAINTIFF DIST 8	30.4 MILES	34.7 DIAGONAL
HOW LONG IS PLAINTIFF DIST 9	33.5 MILES	37.0 DIAGONAL
BOSSIER PARISH LENGTH	54.3 MILES	
BOSSIER PARISH DIAGONAL LENG	58.6 MILES	
OUR % DEVIATION IS	-5.715-+6.03	6 11.751%

#### JEROME DARBY ELECTIONS

1983 JEROME DEFEATED THOMAS MCDANIEL (w) AND WON
1987 JEROME DEFEATED JOHNNY GIBSON (B) AND THOMAS MCDANIEL (W)
AND WON WITH OVER 50% OF THE VOTE
IN 1983 AND 1987 JEROME WAS ELECTED IN A 68.183% WHITE DISTRICT
1991 JEROME WAS UNOPPOSED
IN 1991 JEROME WAS UNOPPOSED IN A 73.108% WHITE DISTRICT

### Bossier Parish, LA -- Plaintiffs' Plan 12 Districts 12 Members

District	Total	Black	Total VAP	Black VAP	% Black	% Black VAP	Dev.	%Dev.	# of members
1	7426	430	5573	265	5.8%	4.8%	252	3.51%	1
2	6840	4152	4508	2440	60.7%	54,1%	-334	-4.66%	1
3	7057	1028	5403	629	14.6%	11.6%	-117	-1.63%	1
4	7043	1232	5017	698	17.5%	13.9%	-131	-1.83%	1
5	7475	549	5567	360	7.3%	6.5%	301	4.20%	1
6	7474	439	5357	310	5.9%	5.8%	300	4.18%	1
7	7207	906	4870	534	12.6%	11.0%	33	0.46%	1
8	6867	4209	. 4621	2680	61.3%	58.0%	-307	4.28%	1
9	7144	781	5139	513	10.9%	10.0%	-30	-0.42%	1
10	7118	1065	4790	696	15.0%	14.5%	-56	-0.78%	1
2.5	7399	607	5125	362	8.2%	7.1%	225	3.14%	1
	7038	1983	4934	1297	28.2%	26.3%	-136	-1.90%	1

TOTAL 86088 17381 60904 10784 20.2% 17.7%

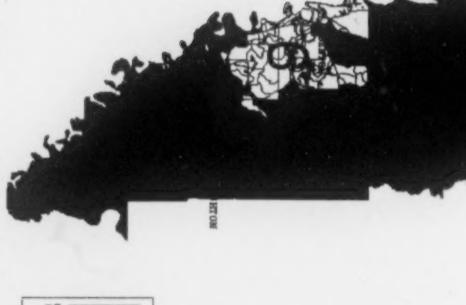
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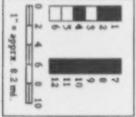
8.85%

IDEAL DISTRICT SIZE = 7174 Single-member





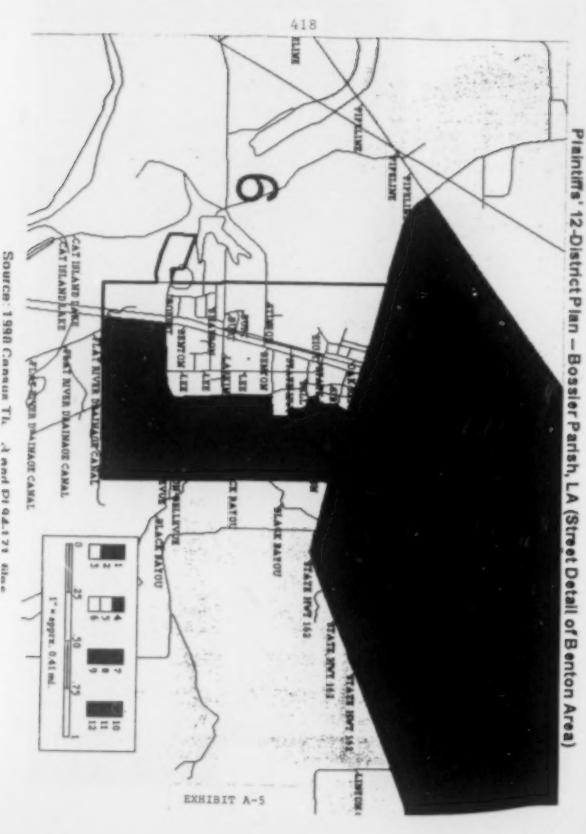






Source: 1990 Census 1

Source: 1990 Census Til. . and PL94-171 files



Source: 1990 Cansus Th. A and DIGA-171 Mac

Source: 1990 Census T Rand PL94-171 files

### COMPLAINANT'S EXHIBIT NO. 10

Breakdown by Mr. Gary Joiner of the Racial Composition of the Population in the Splits in the Precincts Found in Cooper Plan No. 2

### PRECINCT CUTS IN THE COOPER 2 PLAN

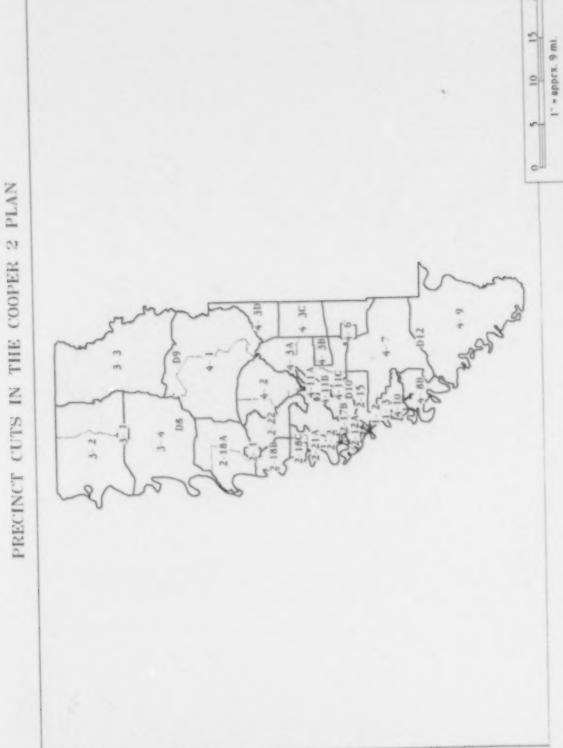
#### DETAILING POPULATION AND RACIAL CHARACTERISTICS

SOURCES:

PLAN DEVELOPED BY WILLIAM COOPER U.S. BUREAU CENSUS TIGER FILES U.S. BUREAU OF THE CENSUS PL 94-171 DATA

Prepared by

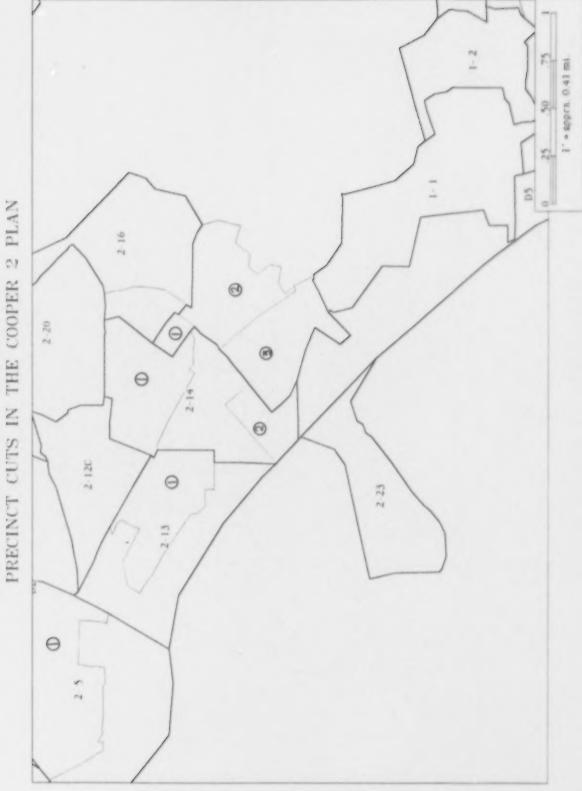
Gary D. Joiner Precision Cartographics P.O. Box 44144 Shreveport, LA 71104 February 14, 1995



PRECINCT CUTS IN THE COOPER 2 PLAN

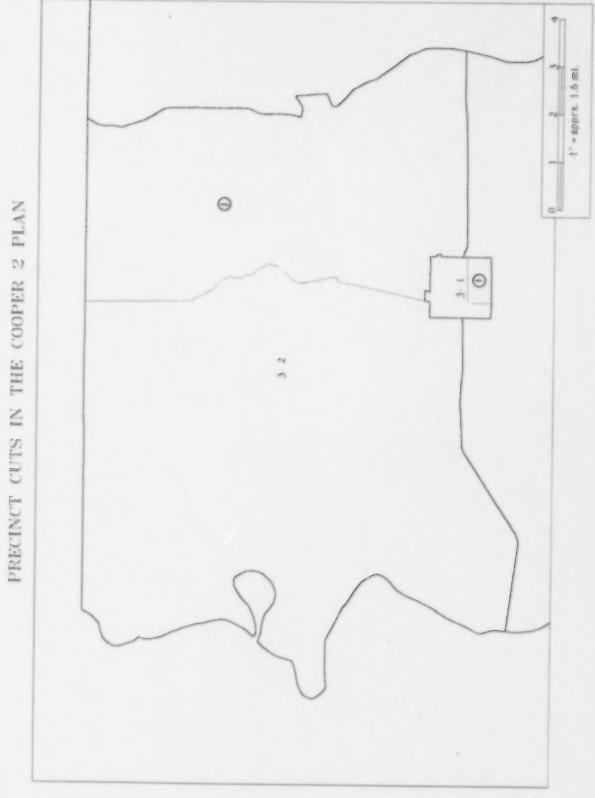
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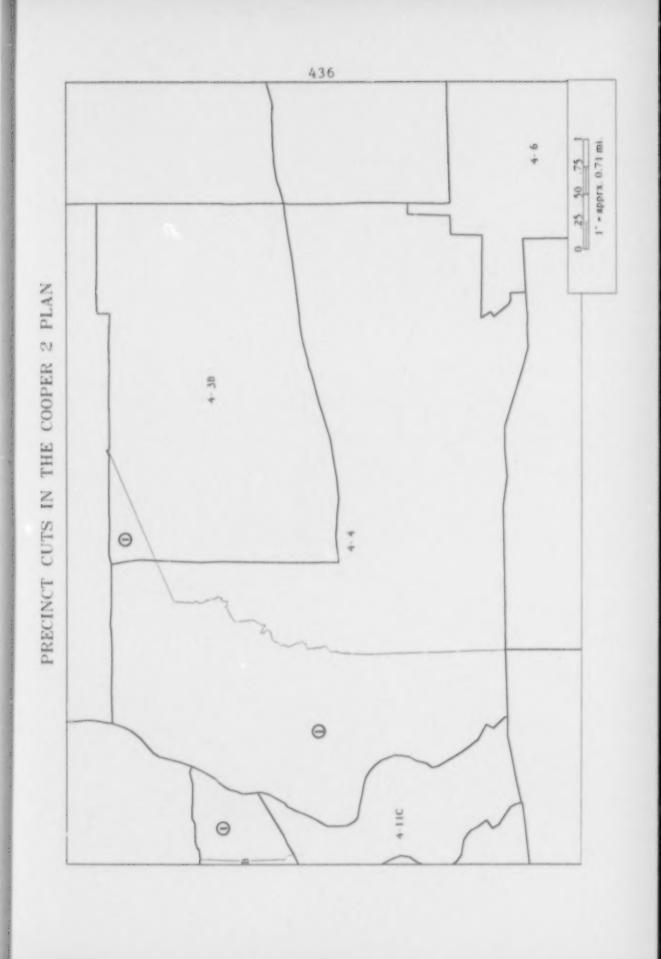
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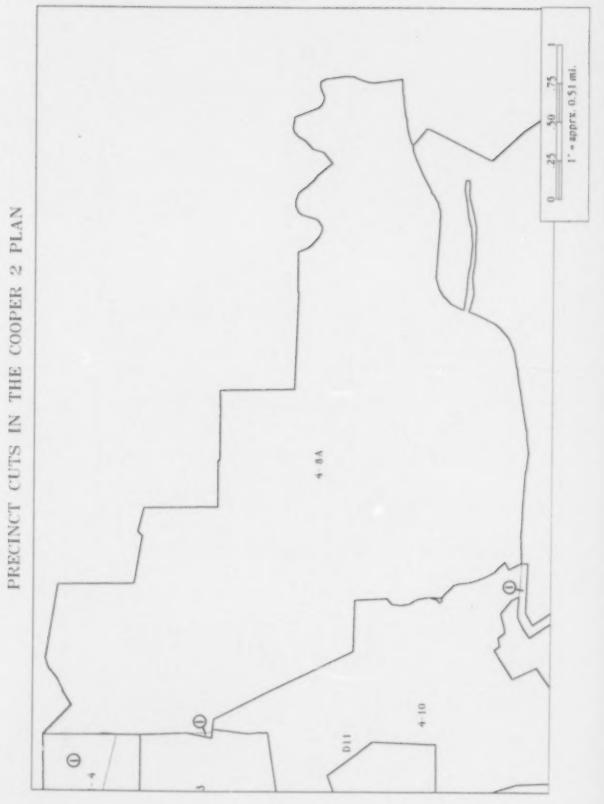




PRECINCT CUTS IN THE COOPER 2 PLAN







COOPER 2 PLAN PRECINCT CUTS DETAILING POPULATION AND RACIAL CHARACTERISTICS

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PRECINCT 2-178, CUT 1											
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Pip   NH4pWMM   NH4pBills   NH4pWMM18   NH4pBills   NH4pWMM18   NH4pBills   NH4pWMM18   NH4pWM18   NH4pWMM18   NH4pWM18   NH4pBills   NH4pWM18   NH4pWM1							1		8	9.70.07	A	7,00%	
Acres         Name         Prop         IntropVMrt	RECINC	T 3-2, CUT 1											
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0.725465 220150112 277 1.035641 220150112 143 0.58794 220150112 301 0.041300 220150112 302 0.041300 220150112 303 0.04130 220150112 303 0.04130 220150112 304 0.007881 220150112 304 0.001342 220150112 304 0.001342 220150112 130 0.001342 220150112 130 0.077813 220150112 130 0.077813 220150112 130 0.077813 220150112 130 0.077813 220150112 220 0.077813 220150112 220 0.07880 220150112 130 0.07880 220150112 130 0.07880 220150112 130 0.07880 220150112 140 0.07880 220150112 140 0.07880 220150112 140 0.07880 220150112 140 0.07880 220150112 140 0.07880 220150112 140 0.07880 220150112 140 0.00880 220150112 130 0.00881 220150112 130 0.00881 220150112 130 0.00881 220150112 130 0.00881 220150112 130 0.00881 220150112 130	PRECINCT 3-4, CUT 1  Avea Neme  A 80 90977 3-4  A 80 90877 3-4  B Avea Neme  1839 0 927852 220150112 5114  2113 0 168583 220150112 5994  2114 0 104722 220150112 5994  CUT TOTALS:  AFFER CUT:
17707 1771 1771 1771 1843 1852 1852 1863 1863 1863 1863 1863 1864 1770 1770 1871 1871 1871 1871 1871 1871	PRECING D 34 D 1829 2713 2714 2714

	3.78	COOPER										0		3																		,										
S. Daniel Man B.	E STATE OF THE STA																																									
A Daniel Or Bandon Adding	11 00																																									
O. C. N	70.47																																									
	089	Pop18	3	24	23	~	12	000	0	0	2		14	Ø	23		ce	8	00	0	0	27		0	0	0	9	0	0	0	0	0	2	0	0	10	0	35	25	0	0	248
	210	NHap8M18	0	64	6	0	0	2	0	0	*		0	2	0		0	0	2	0	0	64	0	0	0	0	0	9	0	0	0	0	1	0	0	0	0	0	0	0	0	1.8
	MINDOVINIO MINDOMIO	NHapWM18	0	22	20	4	17	80	0	0	2		14	CH	23		54	S	0	0	0	23		0	0	0	0	0	0	0	0	0	52	0	0	30	0	15	12	0	0	229
	600	WHap Bilk	0	2	0	0	0	2	0	0	9		0	4	0		0	0	2	0	0	6	0	0	0	0	0	Ø	0	0	0	0	97	0	0	0	0	0	0	0	0	22
	MHEGENN MYSERM STR	HINDWIN	8	82	28	*	23	2.2	0	0	40		13	8	32		8	0	0	0	0	8	0	0	0	2.2	0	0	0	4	0	0	37	13	0	61	0	18	3.4	0	0	333
,	808	N N	n	28	36	*	23	200	0	0	10		20	-	32		0	30	8	0	0	413	**	0	0	3.3	0	0	0	*	0	0	8	13	0	13	0	16	3.4	0	0	334
(	P	Pes																																								
UT 1	Nerto	Name	22015011103116	220150112 602	220150112 601	22015011103110	22015011103108	22015011103115	22015011103116	22015011103114	22015011103111	22015011103199	220150112 808	220150112 609	220150112 813	220150112 699		22015011103122			22015011103132	220150111031278	22015011163130	22015011103139	22015011105140	22015011103112	22015011103141	22015011103131	22015011103133	22015011103123	22015011103110	220150112 003	22015011103104	22015011103108	22015011103107	22015011103109	22015011103105	22015011103103	22015011103117	0.662533 72015011103101	0.021179 22015011163102	TALS.
RECINCT 4-1, CUT	Area area	Area succe			5 647052	0.818186	2 897549		~		0.094257	0 190094	0.583072	0.856308		0.010396	0 346455	5.033803	-							800	0.01536		0.000079	0.0003463		0.052079	4 904483	0.088225			0 0000141					CHT TOTAL &
RECIN			9478	2028	2030	2036	2036	2041	2043	2044	2047	2049	1966	1966	1974	2434	2048	2295	2045	2280	2290	2293	2284	2307	2317	28	2318	2319	2320	2324	2054	2027	20032	2036	2037	2030	2033	2051	2040	2062	2053	

COOPER		•	D 4	0 6	9 9	0 6	9	0		6		*			COOPER	9				,	030000	-		•		@				36
% PopNiNspBik 11.07												15.10%	A. Prodelitor	11.07	25.5			11.07%		Manufacture and a second	5 7									AR 2194
% Pop18 % PopNNspWM8 70 45 87.56												84.66%	E. Donatti Mandal Ba	87 55	00.70			865 20	And the second s	STANDOUNDS-LIN	28.42									40 000
% Pop 18 70.45												860 00	St. Door 18	100				70.45%			67.11									00000
		124	8 8	2 2	2 0	35		*	000	12	402	311	Breeth	213	Pop18	0	0	713	g and	Didn's	Don't B	No.	0	0	10	10	0		425	50
4000		9 9	0.0	9 4	0	9 90		0	0	0	90	13	Missellera	0	NHsoBik18	0	0	72		al modernia	3/6	88		0	90	4	0		22	
Histografia NYspSR18 77 CS1 77 NHspSR18		116	22 8	8 8	40	2		10	04	10	388	282	Milesableta	-	NHapWht18	0	0	631		Distandana	Nicolatoria	322	0	0	14		0		342	200
24		• ;	62		- 0	200		0	0	0	8	8	all or all all all all all all all all all al	410	NHaoBilk I	0	0	112	100	1	Midwellie.	103	0	0	m	un.	0		113	
NMapWM NMapBilk B88 1 NHamiMM NHamBilk		172	823	124	3	3	1	Oil Oil	4	14	*	387	MishandAfter	-	NHaoWht	0	0	900		STANSFOLD .	Millandiffile	435	0	0	29		0		472	
1012		ğ :	8 :	671	2 0	7.8		0	*	10	568	457		1013	2101	0	0	1012			1432	848	0	0	34	13	0		502	0.00
2 1	}												Bos		Pop					1	1	•								
42 35 32883 4-2			2134 0.128324 22013011103302	TIOCHOSE GLOCOCO F	CONTRACT SACROLO	2131 0 546313 22015011103301	2278 0.035188 22015011103288J	2199 0.024636 22015011103210	2207 0.061567 22015011103212	2194 0.03974 22015011103209	CUT TOTALS:	AFTER CUT:	PRECINCT 4-2, CUT 2	22 24 22007 A. 2	Arms Nerve	508 0.909705 22015011103211D	CUT TOTALS:	AFTER CUT:	*		431 24 889/3 4-3A	1401 10 26033 22015011103701R	1400 0.821565 22015011106201			2299 0.754369 220150111037010	2305 0.086326 22015011103702	2315 0.087797 220150111037994, 2403 0.003106 220150111037999N 2312 0.007347 220150111037999M	100	AETED CITY.
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COOPER	834000			2000 2000 2000 2000 2000 2000 2000 200	
% Prophyspills 42 Da	M. Prophysique (B. 3)		S-Popkingdin		4 13%
Mygwhyd & So 42	% PropAINspWTR 80.43		SO SON SPORMINGWAN		8777.88
81-00-18 11-79	8.Pop18 10.87		73.42% Why18		811189
Paper 8		8248	Page 81	(1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	1717
NHspBik18 8		22 2 28	148		3
NHSpWM18 967 NHSpWM18	NHspWMT18 1011	~00 ×	1004	20 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	
NHspBik 602 NHspBik 0	ă ă	Managama Managam Managama Managama Managama Managama Managama Managama Managama Ma Managama Managama Managama Managama Managama Managama Managam Managama Managama Ma Managama Managama Managama Managama Managama Managama Managama Managama Managama Ma Managama Ma Ma Ma Managama Ma Ma Ma Ma Ma Ma Ma Ma Ma Ma Ma Ma Ma	Name of	Military Mil	
MHspWPN 808 WHspWPN	12 9	8 0 0 8	1323	2004 2004 2004 2005	2786
	168	3% 5	2	200 00 00 00 00 00 00 00 00 00 00 00 00	1827
	g g	0.00	2	2	
PRECINCT 4-3A, CUT 2	3B (	Avea Name 1479 0.141158 22015011105308 1477 0.074112 22015011105305 1484 0.002584 22015011105212 CLIT TOTAL S.	AFTER CUT: PRECINCT 4-4, CUT 1	A44 12 68578 4-4  A460  B52 1 350547 22015011103501  B53 1 58105 22015011103502  B54 0 0.028813 22015011103504  B57 0 0.008842 22015011103504  B50 0 0.010882 22015011103504  B50 0 0.010882 22015011103504  B50 0 0.010883 22015011103514  B50 0 0.02285 22015011103514  B51 0 0.02285 22015011103513  B52 0 0.013474 22015011103508  B53 0 0.013474 22015011103508  B54 0 0.02385 22015011103508  B55 0 0.01347 22015011103508  B56 0 0.01347 22015011103508  B57 0 0.03341 22015011103508  B58 0 0.01347 22015011103508  B59 0 0.01347 22015011103508	AETER CITY

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% Pophinsp8in						6	%.PopNHsp8R 8.22		8 548	*Pophtrapility	3.69%
S. Popin Maphytte 82.37						92.37%	%PopNHapiVM 86.59		86.15%	% PopMMspWM 85.91	92 23%
%.Pop18						817.23	Pop18		20 21%	67 to 10 to	2077
Pop18	0 1	0 0	0 0	0 0	0	7.0	Pop18 3071	80 a 51	200	Pop18 800 800 800 800 800 800 800 800 800 8	523
NHSp8818 P	0 1	0 0	0 (	0 0	0	C4	NYMADEM 18	MHsp@k18	222	8 6 G G	8
89 NHSpWR18		0 0	0	0 6	0	8	NHspWht18 2665	108 108 10 124	2561	NHspWht18 784 NHspWht18 314	400
hrapak 2 hrapak 2	0	0 0	0	00	0	re	080 M	NON	378	NHapBik NHspBik 8 29 9	3.3
NASPANIA 109 NASPANIA	0			9 6	0	100	400s	25 E E	3812	NHapWhi 1178 NHapWhi 430	248
911	0	0 0	0	00	0	118	8238	30 30 30 30 30 30 30 30 30 30 30 30 30 3	4425	514	25.0
2 2							2	2		8 8	
Area 4.242834 Area	0.293799.220150108	6 0.375671 22015010888108F 11 0.119194 22015010888198D 6 0.048025 22015010808999C	0.144797.2201501148 0.015733.2201501148 0.053427.2201501088		CUT TOTALS:	AFTER CUT:	01 00	Assa Name 153 0.13924.22015011098428A 1411 0.019489.22015011098428A CUT TOTALS:	AFTER CUT:	PRECINCT 4-11B, CUT 1  Area Name  4112 1341755 4-11B  10 Area Name  5-40 0.52214 22015011103715A  CUT TOTALS:	AETED CIT.
0 0	200	8222	2412	1000 1000 1000 1000			PRECI	153		PRECI	

## **COMPLAINANT'S EXHIBIT NO. 11**

Breakdown by Mr. Gary Joiner of the Racial Composition of the Population in the Splits in the Precincts Found in the NAACP Plan Presented by Mr. George Price to the School Board as an Alternative to the Adoption of the Police Jury Plan

## PRECINCT CUTS IN THE N.A.A.C.P. PLAN (SCHOOL BOARD DRAFT PLAN)

DETAILING POPULATION AND RACIAL CHARACTERISTICS

SOURCES: PLAN DEVELOPED BY N.A.A.C.P.
U.S. BUREAU CENSUS TIGER FILES
U.S. BUREAU OF THE CENSUS PL 94-171 DATA

Prepared by

Gary D. Joiner

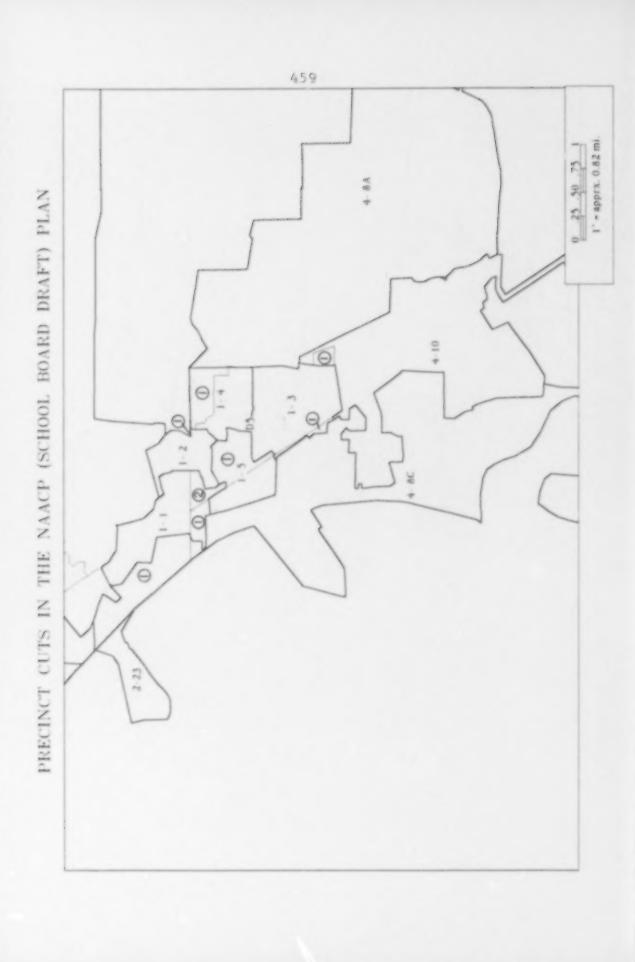
Precision Cartographics
P.O. Box 44144

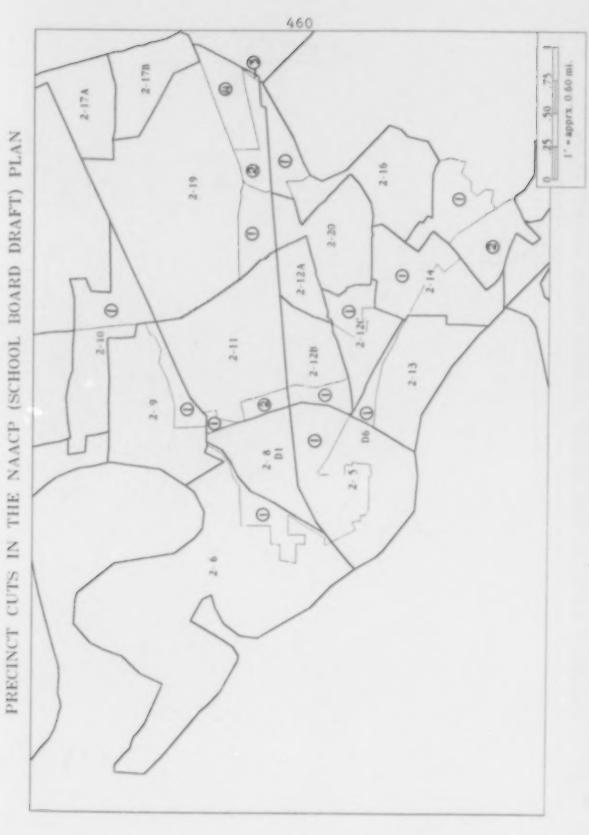
Shreveport, LA 71104

February 14, 1995

l" - apprx. 9 mi. PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN 012 2-18A

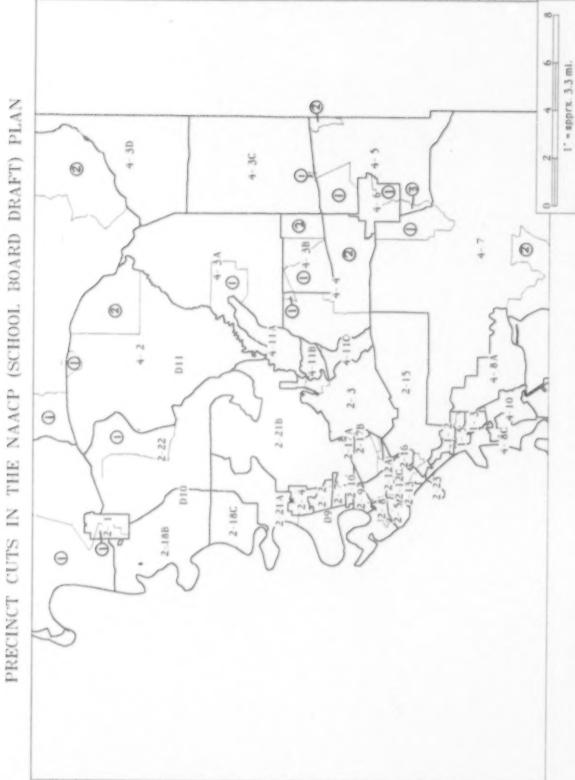
PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



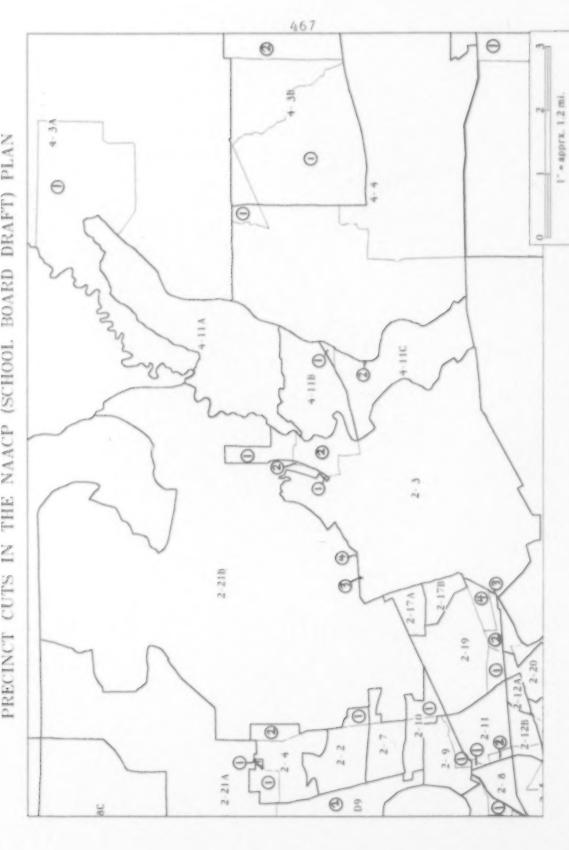


PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

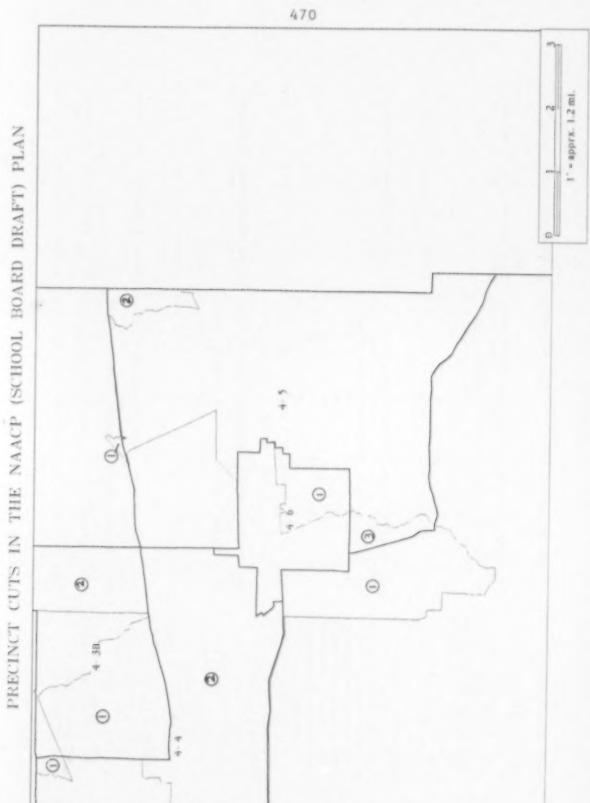


PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



## NORDER MLS

POPULATION AND RACIAL CHARACTERISTICS

NAACP (SCHOOL BOARD DRAFT) PLAN PRECINCT CUTS DETAILING

D Area Name	Day.	Missentaline	MHenRik	New Williams	Missenblik 18	S Cool	Book 5	S. C.	0
1182	1839	1963		1278	131	1465	75.56		
ID Area Name	Pag	NHapWht	NHspBik	NHspWht18	NHsp8ik18	Pop18			
1243 0 061015 22015010898104B	0	0	0	0	0	0			
	0	0	0	0	0	0			
AFTER CUT:	1939	1663	196	1278	131	1465	75 55%	85.77%	10.11%
PRECINCT 1-1, CUT 2									
Area Name	Bop	NHSpWht	NHSpBlk	NHSpWnf18	NHSp8ik18	Pop18	%Pop18	% PopNHspWht	M-PopNHSpBIA
11 059192 1-1	1939	1063	196	1278	131	1465	75.56	17.88	
ID Area Name	Pop	NHSpWht	NHspBlk	NHSpWht18	NHspBlk18	Pop18			
	124	110	13	2	6	28			
1265 0 015928 220150106982188	0	0	0	0	0	0			
1263 0.00622 220150108962158		4	160	£4	9	00			
1267 0 003135 220150108962148	0	0	0	0	0	0			
CUT TOTALS:	133	114	1.8	8	8.8	3			
AFTER CUT:	1806	1549	178	1192	120	1367	75 69%	85 77%	%.98 G
PRECINCT 1-2, CUT 1									
Area Name	Pop	NHSpWht	NHISPBIR	NHSpWht18	NHspBlk18	Pop18	%Pop18	S.PopNHspWM	M.PopNHapBik
12 0 28474 1-2	1985	1665	170	1227	114	1428	7.2	83 88	
ID Area Name	Pop	NHspWht	NHspBlk	NHSpWnt18	NHSp8lk18	Pop18			
1304 0 001101 220150109 901P	0	0	0	0	0	0			
CUT TOTALS:	0	0	9	0	0	0			
AFTER CUT:	1985	1665	170	1227	114	1428	7.98	83 00%	8,998
PRECINCT 1-3, CUT 1									
	Bop	NHSDWhi	NHSpBlk	NHSpWhr18	NHspBlk18	Pop18	%Pop18	%-PopNHspWM	% PopNihapBik
0 7006	188	1746	156	1312	8	7440	73 73		7.80
ID Area Name	Pop	NewspWhit	NHspBik	NHSDWN18	NHsp8ia18	Pop18			
1288 0.01588 22015010898108C	0	0		0	0	0			
1348 0 010949 22015010898106A	69	6	0		6	~			
CUT TOTALS:	8	8	0	9	6				
AFTER CUT.	1001	0.80.0	* 25.6	* 5000	500	2000	23 0000	200	-

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	%-PopNetsp8ik	98.9								2 16%		& Danking Chin	388																					0 000
	*PopNHapWM	07.6								87.26%		P. Donaldete plant	000																					6000
	%Pop18	73 53								72 66%		Pools.	M 44																					0 00%
	Pop18	1450	Pool8	182	98	8	9	83	308	N. 85		Pool	783	Pop18	3	31	1	0	\$	83	31	0	N	9									783	
	NHSpER18	28	NHspBik18	12	0	01		100	23	72		NHSDBR18	2	NHSDBIR18	9	4	60		•	0	0		04	9	0	•	0		69	0	0	•	2	0
	NP4spWht18	1276	NPHILDWN118	139	52	28	85	30	348	828		NPSENVINCTB	719	NETS PAYMETS	43	82	42	30	41	99	200	00	32	2	2	37	099	200	38	8	47	28	719	0
	NHSpBik	136	NHspBik	18	0	60	(*)	100	60	104		NHSoBIA	39	NP-tapBill.	9		8	0	0	0	CA	0	0	6	0	0	9	0	67	0	0	0	38	0
	NHSpWm		The second		68	42	58	75	460	1267		NHspWht	28	WHEDWILL	66	8	24	50	49	62	38	77	69	104	8	88	98	35	90	45	24	38	1887	0
	Pop	1072	Pop	241	70	53	73	83	520	1452		Pop	1096	Pop	74	44	75	Z	23	69	42	90	83	212	000	8	20	(0)	Z	999	90	42	1096	0
MECINCT 14, CUT 1	krea Name	0.416465 1-4	Vrea Name	1305 0 097881 220150108984018	0.018363.22015010898408	0.011613 22015010898407	0.01047 22015010098409	0 009423 22015010898410	CUT TOTALS:	AFTER CUT:	RECINCT 1-6, CUT 1	Vrea Name	0.39999 1-5	vea Name	0 034419 22015010804408	0 008455 22015010898304	0.011659.22015010898305	0 009501 22015010898306	8	0.006303 22015010696307	3	0.015545 22015010804407	0 005437 22015010804406	0 020821 22015010804405	0 009021 22015010804413	0.000901.22015010004404	0 008658 22015010804403	8	8	3	0.000668 22015010804415	0.005433.22015010804410	CUT TOTALS:	AFTER CUT:
MEC	0	3.4	0	1305	1308	1307	1325	1327	9	-	PRECI	0	5.8	DA	1280	1286	1268	1269	1275	1273	1299	1276	1277	1278	1280 (	1279	1310	5000	.000	1312	1284	1314	0	

%-PopNMspBik																																				63 33%
%PopNHspWhi 56 96																																				36.11%
%Pop18 68 44																																				68,50%
Pop18	Poo18	92	0	43	22	82	33	0	73	0	6.00	9.3		2.5		0		36	44	0	30	90	60	43	9 00	60	37	9	C	0		- 05	60	10	999	838
NMspBis 18 540	NHspBlk18	0	0	0	0	15	0	0	-	0	0	0	0	0	0	0	0	(4		0	4	0	9		0	2	CH	0	0	0	0	0	0	0	68	407
NHspWht18 837	NP1spWmt18	10	0	40	22	37	23	0	99	0	10	12	9	2.6	CH	0		37	42	0	25	0	4	200	9	4	36	0	Pa	0		0	9	10	515	322
NHSpBlk 846	NHapBik	0	0	0	0	22	0	0	16	0	4	0	0	0	0	0	0	*	4	0	12	0	*	CA	0	64	4	0	0	0	0	0	0	0	7.4	772
WHSPWht 1166	Metaphylic	125	0	80	33	46	40	0	86	0	16	13	0	20	C/4	10	400	909	52	0	33	0	0	16	100	*	44	83	83	0		13	0	20	736	428
Pop 2047	3	120	0	67	33	99	90	0	114	0	30	13	90	20	24	10	*	8	99	0	47	0	12	18	0	Ob	98	9	S	0		13		20	828	1219
21 1 915979 2- 5	Area Neme	0.166709.22015011103512A	0 011701 22015011103505	0 022085 22015011103504	0.007583 22015011103508	0.046338.22015011103509	0.005971 22015011103514	0.01094 22015011103511	0.188125.22015011103406A	0 020538 22015011103429	0 005236 22015011103423	0.012872 22015011103428	0.003972 22015011103435	0.013851 22015011103436	0 003143 22015011103434	0.00734 22015011103438	0.009325 22015011103439	0 038461 22015011103502	0.012359 22015011103506	0 009564 22015011103503	0.007363 22015011103513	0 00815 22015011103440	0 003875 22015011103431	0.004766 22015011103430	0.003007 22015011103432	0 003322 22015011103433	0 032501 22015011103501	0 008377 22015011103441	0.011847 22015011103442	0 007854 22015011103437	0 003699 22015011103424	0 005724 22015011103427	0 005973 22015011103428	0.003901 22015011103425	CUT TOTALS:	AFTER CUT:
21 1 915979 2- 1	9	1880	2180	2101	2185	2186	2188	2182	2150	2154	2155	2159	2166	2167	2169	2170	2172	2176	2183	2179	2187	2175	2151	2152	2161	2164	2177	2173	2174	2171	2156	2160	2162	2158	9	-

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WPopNehapBax 0.98	0	%Popherspeak 11.58		12.23%	MPophthapan 11.56	1
%Pophil-topWht 96.26	80.26%	%PopNeHspWftt 84.98		84 50%	&PopNetspWhs 84 98	80 8
%Pop18 70 91	70.07%	%Pop18 68.73		80 00%	M-Pop18 9 68.73	68 73%
Pop18	787	Pop18 2594 Pop16	200	100	Pop18 2594 Pop18	2864 400
NHapBik18 10 NHapBik18	01	27.1 NHspBik18 0	9000	284	NHapBik18 271 NHapBik18	5000
NHspWhrt18 766 NHspWhr18 0	766	NHapWhit18 2237 NHapWhit18 0	00822	2064	NHSpWhr18 2237 NHSpWhr18	39 39 5186
NHapBik 11 NHapBik	9.6	NHspBik 437 NHspBik	00000	426	NHapBik 437 NHapBik	437
NHSpWht 1082 NHSpWht	1082	NHapWhi 3207 NHapWhi 0	00888	2844	NHapWhit 3207 NHapWhit	3 8 8 0
Pop Pop	1124	Pop 3774 Pop 0	33 2200	3484	Pop 3774 Pop	37 8 8 0
PRECINCT 2-2, CUT 1  10 Area Name 22 0.87896 2-2 10 Area Name 78 0.090331 22015011104306 79 0.007816 22015011104306	AFTER CUT:			AFTER CUT:	Acte Name Name 8 44398 2-3 Area Name 0 00351 220150111	533 0.277000 22015011104505 526 0.218513 22015011104504 CUT TOTALS: AFTER CUT:

PRECINCT 24, CUT 1	9	AlbdentAffe	Mindaniality	Nichani Mineral B	St S	Pool	%Poo18	* Poonthount	W.PooNHepBik
3475	2446		2	1572	44	-	67.91	94 56	
-	Pee	NHapWhi	Nevapilik	N3HapWht18	NHspBlk18	Pop18			
431 0.166757	150	146	0	112	0	118			
0 029321 2201501	47		0	13	0	13			
0 00419 22015011	19	-		11		£			
0 004293 2201501	*	64	0	2	0	9			
0.018277 2201501	90	59		40	0	20			
CUT TOTALS:	259	243	0	187	0	195			
AFTER CUT:	2187	2070	73	1385	*	1466	67 03%	W 66 M	3 34%
PRECINCT 2-4, CUT 2									
ID Area Name	Pop	NHspWht	NHapBik	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNitspWht	%PopNHspBik
M75	2446	2313	73	1572	44	1681	67.91	94 56	2 90
	Pop	NHspWnt	NHapBik	NHapWhi18	NHsp8ik18	Pop16			
999	34		0	22	0	22			
473 0 012376 22015011104304	18	12	*	30	2	14			
0.01324 220150111	0	0	0	0		0			
CUT TOTALS:	52	46	*	32	2	38			
AFTER CUT:	2304	2267	90	1540	42	1625	67 80%	84.70%	2.88%
PRECINCT 2-5, CUT 1									
ID Area Name	Pag	NHISPINIE	NHupBlk	ParispWhf18	NHapBik18	Pop18	%Pop18	%.PoptathapWitt	Se Pophata
25 0 835996 2-5	1760	786	808	647	582	1266	71 83	45.23	51.65
ID Area Name	Pop	NHapWhit	NHupBik	NH4spWmt18	NHspBlk18	Pop18			
773 0 052368 220150103 106	232	90	224	0	163	170			
780 0 002818 220150103 119	25	0	25	0	22	22			
779 0.001769 220150103 120	17		16	500	12	13			
761 0 010387 220150103 110	8	0	90	0	43	43			
778 0.056951 220150103 116	-	0	11	0	OR.	0			
776 0.018859 220150103 115	2	60	79	6	2	69			
774 0 002133 220150103 121	28	0	99	0	41	41			
739 0.046331 220150103 201	0	0	0	0	0	0			
0 030291 220150102	9	0	0	0	0	0			
	9	0	0	0	0	0			
701 0.004629 220150102 315	*	15	28	13	17	32			
_	36		•	6	0	13			
3 0.002697 220150102	22	12		30	10	15			

		21.80% &PophWispBik 30.40
		73.29% %PopNHspWht %Po
		72.92% \$Pop18 %P
00/2500	TM c w c 4 0 0 4 0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0	782 Pop18 878 878 878 878 878 878 878 878 878 8
0011100	84000-800r48rV46	APRESENTS 811 AP
000880	40000000000000000000000000000000000000	
	2500048002GeB2rc	7233 7783 778 512 512 00 00 00 17
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0102 305 0102 305 0102 308 0102 316 0102 105	102 108 1102 107 1102 120 1102 116 1102 116 1102 117 1102 116 1102 206 1102 206 1102 206 1102 206	102 122 122 123 124 126 126 126 126 126 126 126 126 126 126
2025.96 22015 003.08 22015 003.261 22015 004.207 22015 007.99 22015	0.005514 220150102 0.00523 220150102 0.00523 220150102 0.00523 220150102 0.005342 220150102 0.00427 220150102 0.00428 220150102 0.00428 220150102 0.00428 220150102 0.00428 220150102 0.00428 220150102 0.005314 220150102 0.005314 220150102	783 0.003734 220150102 784 0.005334 220150102 784 0.005334 220150102 CUT TOTALS: AFTER CUT: AFTER CUT: Area Name 26 2.004613 2-6 10 Area Name 684 0.016174 220150104 675 0.007084 220150104 656 0.009862 220150104 659 0.004347 220150104 669 0.004347 220150104
752 00 740 00 747 00 748 00 748 00	764 00 754 00 755 00 75	PRECINCT AFT AFT AFT AFT AFT AFT AFT AFT AFT AF

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		41					30%			WepSik	705	and and	9 9	2	28	74		N-Ispain	286	Ne-tup Bik	16	R	377	609		NHupBik	18	Newpolik	0	0	18
0	39	0	20	8	30	28	267	828		NHEPWH	1675	NAME OF THE PARTY	00	0	26	1600		NHEDWAR	1100	NHEPWH	53	2	88	1015		Netapy	100	NATADAME	0	0	921
0	53	99	52	16	61	73	587	1097		2	1621	2	8	9	108	1715		do d	1928	Poe	37	425	462	1468		8	98	Pop	0	0	28
0.014632 220150104	0 00479 220150104	0 00483 220150104 124	0 005031 220150104	0.014088 220150104	0.007608 220150104	0 0008503 220150104	CUT TOTALS:	AFTER CUT:	PRECINCT 2-7, CUT 1	Area Name	0.56773		800.	0.00703 220150106014054	CUT TOTALS:	AFTER CUT:	PRECINCT 2-9, CUT 1	Area Name	0.68299		0 0 021096 220150105 303	0.000296 220150106	CUT TOTALS:	AFTER CUT:	PRECINCT 2-10, CUT 1	Area Name	0.51256		9 0.233301 220150106014060	CUT TOTALS:	AFTER CUT:
799	674	673	679	872	198	6862			PREC	0	23	0	000	38			PREC	0	20	0	720	840			PRE	Ō	210	9	828		

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%Poptiersolik	15.00								11.34%		%PopN#4spB%	6.21						8 27%		S. Protestaten Sta	23 00							26.96%		%PopNHsp8ik	17.73			
M-Pophersown	81.02								360 M		%PophilispWnt	80 76						88.71%		M.Pochiblect//PC	72.51							805.89		%PopherspWM	79.06			
%Pop18	78 03								78 5276		M-Pop18	8 18						86.21%		%Poorts	78.86							75.87%		%Pop18	70.01			
Pop18	1526	Pop18	0	S	42	X	-	62	1444		Pop18	200	Pop18	64	0	0	2	836		Pop18	1238	Posts	3	8	63	308	ā	837		Pop18	2	Pop18	0	0
NHsp8lk18	181	NHupBik18	0	40	20	R	0	3	128		NHepBik18	69	NHspBik18	0	0	0	0	41		NHspBik18	285	NetapBik18	0			15	N	228		NHspBik18	113	NetspBik18	0	0
NHspWht18	1286	NH4pWM18	0	0	11	13	8	25	1281		Nation Williams	987	NetapWhi18	64	0	0	64	478		NH SPANNETS	927	NitapWhrite	3	23	8	100	286	862		NHspWht18	909	NH apvvnt18	0	0
NHupBik	301	NHapBik	0	10	41	R	0	67	214		NHapBik	25	NHapBik	0	0	0	0	23		NHSpBik	382	Ningpilk	0	0	4	17	8	333		NHspBik	283	NHspBix	0	0
NHSPWM	1628	NetapWitt	0	0	15	13		8	1597		NetapWht	2962	Newspare	*	0	0	*	868		NHSPWIN	1137	Metaphym	100	22	8	198	162	3		WHEDWIT	1128	NHSPWR	0	0
Pop	2007	200	0	10	200	200	87	120	1887		8	600	200	9	0	0	*	629		Pop	1566	Pag	100	90	2	219	333	1236		Pop	1427	Pop	0 1	0
	211 0.8399	Area Name	0.025438 2201501	0 007662 2201501		860 0 006675 22015010602509	Ĕ	CUT TOTALS:	AFTER CUT:	ECINCT 2-1	-	22 0.32027	Ates Name		0 008453 22015010	903 0 005052 22015010602614	CUT TOTALS:	AFTER CUT:	PRECINCT 2-12C, CUT 1	ID Area Name	23 0 28327	ID Area Name				933 0 039069 22015010701406	CUT TOTALS:	AFTER CUT:	ECINCT 2-1	ID Area Name	213 0 512203	Actes Name	0.011182 22015010	898 0.024858 22015010801109

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						79.05%		%PopNHspWht 9	79 50														83.72%		%PonNHsnWht 9	0												
						70.01%		%Pop18	71.25														68.19%		%Pop18													
	0	6	6	0	0	656		Pop18	1512	Pop18	0	27	147	152	153	0	88	213	58	38	94	976	536		Pop18	3703	Pop18	R	14	27	17	54	98	148	123	82	34	C
	0	0		0	0	113		NHspRik18	185	NHspBlk18	0	63	28	14	9	0	7	8	64	0	17	132	53		NHspBlk18		NHspBlk18	60	163	26	17	54	8	110	118	80	28	0
	6	0	0	0	0	958		NHspWht18	1276	NHspWht18	0	25	115	133	138	0	9	143	87	50	27	803	473		NHspWht18		NHspWhr18	28	0	0	0	0	0	38	0	0	9	<
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	0	0	0	0	0	1128		NHSpWht	1687	NHSpWht	0	34	141	171	175	0	110	178	117	72	31	1029	959		NHSDWht	-	NHSpWht	37	12	0	0	0	0	38	0	-	0	<
,	0	0	6	0	0	1427			2122	Pop	0	36	105	211	197	0	130	282	130	73	70	1336	786		Pop	0	Pop	28	17	34	24	78	35	177	180	140	69	ď
	0 003422 22015010801110	0.007947 22015010801113			CUT TOTALS:	AFTER CUT:	PRECINCT 2-14, CUT 1	-	0.514044 2-14	Area Name	0.014835 22015010801211	0.015891 22015010702503	0.034359 22015010702608	0.04633 22015010702607	0.050706 22015010702606	0 006573 22015010702610	0.019384 22015010701407	0.035025 22015010701408	0.024396 22015010702609	0.012337 22015010702502	0.01648 22015010801218	CUT TOTALS:	AFTER CUT:	PRECINCT 2-15, CUT 1	Area Name	12 4389 2-15	Area Name		0.009946 22015010702504			0 016386 22015010702505		0.0503 22015010702314	0.010085 22015010702401	0.011072 22015010702406	0.008717 22015010702408	11450101021050 55800 0
-	900	910	885	110			PREC	0	214	0	883	1010	857	962	964	988	936	940	943	1011	1008			PREC	0	215	0	1014	1017	1182	1181	1016	1186	1187	1189	1192	1195	1196

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00 64 54	%PopNHspBik 33.68	38.04% %PopNHspBIK 7.80
72 09%	%PopNHspWnt 59.69	55.08% %PopNHspWM 86.53
68.26%	%Pop18 68.07	%Pop18 74.11
28 30 22 22 28 24 4 4 77 77 77 28 31	Pop18 3703 51 52 76 78 78 78 79 70 171 171	3129 3129 1491 Pop18
28 22 22 24 25 6 6 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	NHspBik18 1191 NHspBik18 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	NHspBik18 86 NHspBik18 0
41-00000 F8	NHSpWnt 2 NHspWnt	2569 1774 1758 NHSPWNt NHSPBIK NHSPWNt18 1741 157 1319 NHSPWNt NHSPBIK NHSPWNt18 0 0 0 0
444 444 33 33 66 66 70 70 70 70 80 80 80 80 80 80	NHspBik 1832 NHspBik 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	NHSpBik 157 NHSpBik 0
4 t t t t t t t t t t t t t t t t t t t	3247 NHspWht 3247 NHspWht 56 60 60 84 42 60 64 64 64 64 64 64 64 64 64 64 64 64 64	2569 2569 NHSpWht 1741 NHSpWht 0
244444 8 6 6 2 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	Pop 8 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	
0 010629 22015010702412 0 004268 22015010702402 0 006522 22015010702405 0 010206 22015010702409 0 007851 22015010702407 0 007267 22015010702506 0 004711 22015010702506 0 003281 22015010702410 CUT TOTALS:	PRECINCT 2-15, CUT 2  215 12 4389 2-15  D Area Name 1006 0.013649 22015010801306 1007 0.011475 22015010801307 1019 0.017393 22015010801308 1020 0.008052 22015010801308 1022 0.008052 22015010801308 1022 0.008052 22015010801308 1022 0.008052 22015010801308 1022 0.008052 22015010801308 1022 0.008052 22015010801308 1024 0.014393 220150108013018 1024 0.014567 22015010801303	AFTER CUT:  PRECINCT 2-16, CUT 1  10 Area Name 110 Area Name 1111 0.053003 22015010201704A 1135 0.086167 22015010701102
1197	PRECI 100 1006 1007 1019 1021 1022 1022 1022 1022 1022 1022	PRECI ID 216 ID 1111 1111

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		74.11%	%Pop18	73.46																														_		-	-	
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6	0	1310	NHspWht18	293	WispWhi18	64	4	0				20	0	0	0	0	0		0		0	0		3	0	0		0	0	S		0	0	0	0	0	0	
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1138 0 004367 22015010701101	CUT TOTALS:	AFTER CUT:	PRECINCT 2-18A, CUT 1	6830	Name Name			0.482625.220150111034068	1369/1 220150112 550	700701 220150112 599E	064993 220150112 598A	0 020596 220150112 545	148909 220150112 524	095398 220150112 525	3 269563 220150112 555	0 072243 220150112 554	3 149772 220150112 547	0 056022 220150112 599C	3316647 220150112 546	0004972 220150112 5090	0 033749 220150112 549	0.071077 220150112 548	0.001374 220150112 599F	8 704751 220150112 505A	0,001434 220150112 516	0 150677 220150112 514	0 653015 220150112 528	0 005459 220150112 520	0 004871 220150112 521	0 019881 220150112 513	0.117331 220150112 5998	0 022126 220150112 517	0 013345 220150112 518	0 012202 220150112 519	0 043467 220460442 545	6 0 023431 220150112 527	A AAAAA 220460412 522	U 0043/0 429/39/14 948
1138 0	O	A	PRECIN	404	IN A	-		2070 0	2073 0	2084	2086 0	2096 0	2063 0	2084	2115	2085 0	2071 0	2097	2098	2103 (	2104	2105	2106	1938	2058	2059	2102	2065	2086	2068	2088	2061	2112	2111	2000	2000	2440	21.12

30.43%

63.07%

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		8	0	0
ORDERTALS		19	0	0
ž		3	0	0
		22	0	0
		27	0	0
	N885	529	556	526
	008647 220150112	338417 220150112 529	067848 220150112	039057 220150112

		% PopNHs	
	72.18%	%Pop18 69 02	68.85%
200	358	8 Pop 18 2010 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	1991
e 0 0	228	NHspBik16 51 NHspBik16	519
000	169	1358 1358 1989 1990 1990 1990 1990 1990 1990 199	1339
m00	320	NHSpBik 880 NHSpBik 0	880
200	223	1844 1844 NHSpWMt 20 20 20	1824
27	250	Pop 2812 Pop 20 20 0 0 0 20	2882
2087 0.006647 220150112 599H 2261 0.338417 220150112 529 2116 0.067848 220150112 556 206" 0.039057 220150112 526	CUT TOTALS: AFTER CUT:	PRECINCT 2-19, CUT 1  ID Area Name 219 1.94232 2-19  ID Area Name 921 0.120217 22015010601509 925 0.034708 22015010601703 923 0.002093 22015010601510 CUT TOTALS:	AFTER CUT:

64.52%

33.47%

spWht %PopNHspBik 63.32 \$0.22

PopNHspBik 30.22	29 41%
MPopINHspWht %	64.10%
%Pop18 69.02	68 65%
	133
NHspBik18 Pop18 519 2010 NHspBik18 Pop18 51 133	988
1358 1358 14spWht18	71 1267
NHspBik N 880 NHspBik N 76	76
NHspWht 1844 NHspWht 89	98
Pop 2812 Pop 178	178
PRECINCT 2-19, CUT 2  ID Area Name 219 1.94232 2-19  ID Area Name 1109 0.04655 22015010601605  1109 0.055969 22015010601702	1110 0.02558 22015010601704B CUT TOTALS: AFTER CUT:

PopNHspBik 30.22	30.22%
MPopNHspWht %PopNHspBik 63.32 %PopNHspBik	63.32%
%Pop18 9	519 2010 , 69,02%
2010 2010 Pop18 0	2010
NHspBlk18 519 NHspBlk18 0	
Pop         NHspWht         NHspWht         NHspBik         Pop16           2912         1844         880         1358         519         2010           Pop         NHspWht         NHspBik         NHspWht         Pop18         0         0         0           0         0         0         0         0         0         0         0	1358
NHspBlk 880 NHspBlk 0	980
1844 NHspWht N	1844
Pop 22912	2012
PRECINCT 2-19, CUT 3  ID Area Name 219  ID Area Name Pol  II Area Name Pol  CUT TOTALS:	AFTER CUT:

PRECINCT 2-19, CUT 4										
ID Area Name	Pop	NHspWht	NHspBik	NHspWht18	NHspBik18	Pop18	%Pop18	%Pop18 %PopNHspWht %PopNHspBik	%PopNHspBlk	
10 Area Neme	Pop	NHSpWhi	NHSp	NHspWht18	NHSpBlk18	P				
2 0.171434	28	11		8		17				
1142 0.017769 22015010601604	0	0	0	0	0	0				
CUT TOTALS:	28	9.0		80		17				
AFTER CUT:	2886	1833	879	1350	518	1993	89 06%	63.51%	30.46%	
PRECINCT 2-21A, CUT 1										
2211 O Area Name	Pop	NHspWht 496		NHSpBik NHSpWhf18	NHspBlk18	Pop18	%Pop18 75.27	%PopNHspWht 90.18	%PopNHspBlk 8.00	
D Area Name	Pop	NHspV	NHspB#	NHspWht18	NHspBlk18	Pop18				
2408 0.00849 22015011104115D	11	11	0	10		9				
CUT TOTALS:	11	11	0	20	0	5				
AFTER CUT:	539	485	5 44	368	36	100	75.88%	%96.69	8.16%	
PRECINCT 2-21A, CUT 2										
ID Area Name	Pop		NHspBlk	NHspWhit NHspBlk NHspWhi18	NHspBlk18	Pop	%Pop18	%PopNHsp	%PopNHsp	
211 9 186616	220			3/3		414	12.61	80.18	00.00	
ID Area Name	Pop	NHspWht	NHSpBik	NHspWht18	NHspBlk18	Pop18				
427 1.533611 22015011104207	13	12	0	10	0	10				
391 0.36755 22015011104299B										
0.003433 2201501110	0		0	0		0				
	•	,	,			•				
0.673109 2201501110	9		0	0		0 0				
0.078877 2201501110	0		0	0		00				
	0					0				
	9		0	0		0				
598 0 021021 22015011104237	0	0	0	0		0				
602 0.013448 220150105 402	0	9	0	0		0				
601 0.00997 220150105 401	0	_	0	0		0				
0	0	_	0	0		0				
596 0.048607 22015011104232	0	_	0	0		0				
450 0.080018 22015011104208	00	-	50	8	61	2				
437 0.047842 22015011104208	63	-	2	0		9				
CUT TOTALS:	28	23	8	3 16		2 18				
AFTER CUT:	524	473	3	357	34	906	75.57%	90.27%	7,82%	

## NORDER XLS

2 286 Pop 278 217 217 217 217 219	NHSPWRI N 75 75 75 215 NHSPWRI N 290 290 NHSPWRI N	HspBik P	NHSpWnt NHSpBik NHSpWntt8 NHSpBik18 Pop18 NHSpWnt NHSpBik NHSpWntt8 NHSpBik18 Pop18	O O O O O O O O O O O O O O O O O O O	200	767.80 67.80	SPOPNHSPWNT SPOPNHSpBIK	M-opninspeik 0.00	
2 Pop 217 217 217 217 217 217 218 219 219 219 219 219 219 219 219 219 219	215 215 216 290 290 290 290	HSpBik		Street or William Street or Street	Dood				
2 2 296 - 296 - 296 104405 74 221	75 215 290 290 8pWht NI	2	42	NHSpeikte Popte	45				
2 Pop 296 Pop 74 74 221	215 290 290 spWht Ni	0	42	0	45				
74 296 74 296 74 221 74 221 221 221 221 221 221 221 221 221 22	spWht Ni 290 spWht Ni	0	153	0	155	71.43%	86,08%	0.00%	
Pop 74 221 74 221 73 221	spWht Ni								
1104405 74 74 221	290 spWht Ni	HspBlk h	NHSpWhi NHspBik NHspWhi18 NHspBik18 Pop18	NHspBik18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
74 74 74 74 74 74 221	spWht Ni	0	195	0	200	67.80		0.00	
110405 74 221	-	HspBik h	NHspBik NHspWnt18 NHspBik18 Pop18	NHspBlk18	Pop18				
221	7.2	0	3	0	95				
73	72	0	90	0	52				
7.2-21B, CUT 3	218	0	145	0	148	84.69.99	96.64%	0.00%	
Dog									
DE LES	SDWht NI	HapBik N	NHSpWht NHspBik NHspWht18	NHspBik18 Poo18	Poo18	%Pop18	%PooNHsoWht	%PooNHspBik	
1479	290	0	196	0	200	67.80		0.00	
Area Name Pop NHs	SpWht N	HspBik N	NHspWht NHspBik NHspWht18	NHspBlk18 Pop18	Pop18				
010601409C 0	0	0	0	0	0				
CUT TOTALS: 0	0	0	0	0	0				
AFTER CUT: 295	200	0	186	0	200	67.00%	98.31%	0.00%	
PRECINCT 2-21B, CUT 4									
	IN JUMPI	HspBlk h	Pop NHspWht NHspBik NHspWht18 NHspBik18 Pop18	NHspBlk18		%Pop18	%PopNHspWht	<b>%PopNHspBIK</b>	
851 2-218	290	0	196	0	200	67.80	98.31	00'0	
Pop	NHSpWht Ni	HspBik N	NHSpBIK NHSpWht18	NHspBik18 Pop18	Pop18				
010601401	0	0	0	0	0				
CUT TOTALS: 0	0	0	0	0	0				
AFTER CUT: 295	280	0	195	0	200	67.80%	98.31%	0.00%	
PRECINCT 2-22, CUT 1									
Pop				NHspBlk18 Pop18		%Pop18	%PopNHspWht	%PopNHspBik	
969 2-22 1672	1486	145		120	1274	76.20	88.88	8.67	
Area Name Pop NHs	SPWM NI	HspBlk N	NHSpWht NHspBik NHspWht18	NHspBlk18	Pop18				
0.040427 220150111033994 129	112	15	90	12	103				

	%PopANHspBit 32 98
	89.38% %PopNH4spWht 9 86.20
	79.33% 73.28
\$ 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	Pop18 787 787 787 787 787 787 787 787 787 7
000000000000000000000000000000000000000	76 231 231 231 231 231 231 231 231 231 231
\$ 25 000 0 5 0 5 0 0 0 0 4 0 0 0 0 0 4 0 0 0 0	739 NHspWmt18 553 NHspWmt18 77 59 553 553 553 553 553 553 553 553 553
000000000000000000000000000000000000000	NHspBik NHspBik 354 NHspBik 354 NHspBik 354 NHspBik 354 NHspBik 355 12 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
25 ± ± 5 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	934 711 711 711 82 5 5 6 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
432 433 433 433 433 433 433 433 433 433	900 4701 800 800 800 4100 800 41100 800 41100
	73
2196 2196 2206 2210 2210 2228 2235 2235 2248 2285 2285 2285 2285 2285 2285 228	PREC 10 31 1805 1803 1803 1805 1805 1805 1805 1805 1805 1805 1805

					0.25%		M. Donnblider, Dill.	AK OF															40 32%		W.Donniblangille	45.03											
					90 45%		M.DonblistaniAres	a adda as															49.41%		S. Drankstanana												
					74.10%		W.Dooth	71.24															70 19%		W.Ponfill	74 34											
9	90	9 60	0	275	512		Poo18	867	Posts	2	7	22	9	1	3.5	0	3.6	. 0	9 6	0 0		0	777		Poo18	5	Pools	00	0	40	\$ 25	32	8.8	57	2	0	9
5	00		0	200	33		NH-teoBit 18	359	NovapBik18	0	0	2	0	0			00	0		00	0	0 00	287		Wite String	675	NHspBik18	0	0	8	12	0	0	15	0	0	0
62	0	0	0	75	47.0		WHEDWARTS	499	WHEDWHITE	2	7	8	0	7	31	0	3.6	6	•		•	. 3	411		WHEOWNERS	490	WHEDWINE 18	8	0		0	30	50	42	\$	0	0
0	18	9	0	297	25		NHapBik	548	NHupBik		0	64	0	0	0	•	•		0		6	. 04	3		NHsp8ik 1	548	NHspBilk 1	0	0	S	3.4	0	0	23	0	0	0
2	0	0	0	8	625		NIHADWIN	655	WHEPWIN	9	7	23	2	(6)	41	0	18	0	0	0		108	22		WhispWhit	655	WHSpWhit	es	0	4	0	37	18	52	0	0	9
@	18	9	0	383	169		Pop	1217	200	0	1	25	6	0	413	0	18	0	0	0	50	110	1107		Pop	1217	Pop	6	0	0	14	41	10	75	0	0	9
0 004335 220150112	0.003547.220150112	1804 0.004943 220150112 359	0.002543 220150112	CUT TOTALS:	AFTER CUT:	PRECINCT 3-2, CUT 1	Area Name	32 86 75123 3-2	Area Name	42 1 394835 220150112 100	1.789421 220150112	2.773776 220150112	1 298911 220150112	0.483774 220150112	2 170821 220150112	0 063093 220150112	0.482583 220150112	0 090292 220150112	53 0 101082 220150112 110	46 0.064884 220150112 114		4.0	AFTER CUT:	PRECINCT 3-2, CUT 2	Area Name	32 86 75123 3-2	Area Name	1 210606 220150112	0 860216	1 892454 220150112	0 66064 220150112	0 725465 220150112	0 56794 220150112	1.11036	0 041306 220150112	0 025524 220150112	1731 0 007821 220150112 281
						a.	9		9															bd.	9		0		-	-	9	0	-	-		8	gan .

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48.51%	Popherspan 24 19	«PophitapBin 24 1916 24 1916	65 23 65 23 65 23 65 23 65 23 65 23 65 23 65 28%
8 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	S-PopNHspWht 9 74.59%	%PopNHspWht 9 74.58	33 52 33 52 33.40%
70.65%	77 03%	%Pop18 77.03	65 09 65 02%
22 6 000000	Pop18 570 0 0 0 0 570	870 870 870 0 0	Pop18 1359 Pop18 4
000000000000000000000000000000000000000	NHspBik18 128 NHspBik18 0 0 0	128 128 NHSpBik18 0 0	NHSpBik18 818 818 NHSpBik18 0
0000000	NHspWht18 436 NHspWht18 0	A16 A36 NHspWht18 0 0 6	NHspWht16 520 NHspWht18 4
0000000 8 8	NHspBik 178 NHspBik 0	NHSpBik 179 NHSpBik 0	NHspBik 1362 NHspBik 0 1362
2000 2000	SE2 SHSpWht SHSpWht 0 0 0 0	S62 NHspWht 0 0 0 552	NHspWht 700 NHspWht 4
2000 2000 200	97 9	94 99 94	Pop 2088
2822733	137	28	511A 599L 599K
0.001477 220180112 0.001612 220180112 0.782968 220150112 1.956456 220150112 0.007552 220150112 0.102131 220150112 0.006484 220150112 CUT TOTALS:	PRECINCT 3-3, CUT 1  20 Area Name 10 Area Name 10 Area Name 1689 0 1208 220150112 CUT TOTAL S: AFTER CUT:	10 Area Name 33 40 9026 3-3 10 Area Name 1703 0 026965 220150112 CUT TOTALS: AFTER CUT:	PRECINCT 3-4, CUT 1  A 80 90977 3-4  ID Area Name  1938 0 827628 220150112  1951 0 104732 220150112  2113 0 108583 220150112  AFTER CUT:
0571 1736 1771 1771 1771 1771	PREC 5 5 8 5 1	PREC. 1703	PREC. 0 24 1938 1938 2113

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Area Name	Pop	NHSpWht	NHSpBlk	NHspWm18	NHsp8lk18		%Pop18	%PopNiHsp)	%PopNets
ID Area Name	Pop	NHSOWNE	NHaziBile	Neventaria 520	818 Notanblik 18	1359 Don 18	60.09	33 52	65 23
44 0 429326 220150112 33	31 31	18	13	16	11	38			
770 1 166913 220150112 18	9 22	22	0	2		90			
783 O 872828 220150112 15	30	30	0	27	6	27			
784 0 784377 220150112 15	77 16	*		99	(0)	111			
788 1 135056 220150112 40	11 23	19	-	12	9	18			
1961 3 079701 220150112 43	40	33	01	24	- 60	R			
120 111407 220150112 18	36	32	0	100	0	8			
137 2.325677 220150112 42	8	10	G	13	0	50			
152 3 440035 220150112 42	9 27	10	100	17	wil	26			
58 3146774 220150112 431		24		17	-	22			
150 1.275442 220150112 428	0	24		2	0	2			
1.050967 220150112	9	0	•	0	0	0			
1.200028 220150112	91 0	10	0	13	0	13			
170 0 207232 220150112 430	0	0	0	0	0	0			
1.138136 220150112 (			0		0	-			
0 821827 220150112	3	64	0		0	•			
211051022 821175 0	0	0	0	0	9	0			
0 031567 220150112	2 0		0	*	0	9			
57 0 006566 220150112 427	7 0		0	0		0			
01 191531 220150112 19	9	9	0	*	0	9			
63 0.205843 220150112 60	0	9	0	8	0	6			
CUT TOTALS:	328	278	3	198	37	240			
AFTER CUT:	1759	424	1316	322	781	3.5	63 62%	24 10%	74 82%
PRECINCT 4-1, CUT 1									
ID Area Name	Pop	NHspWht	NHspBlk	NHspWh18		Pop18	%Pop18	S-Pophitspl	%PopNitspBik
41 105 8035 4-1	500	636	326	699	210	089	70.47	06.11	33.78
Area Name	dod	NHSpWm	NHSpBik	NHspWht18	NHapBik18	Pop18			
34 0 486743 220150112 633		•	0	9	0	0			
23 1 348469 220150112 53	94	44	0	33	0	33			
27 1 665669 220150112 53		74	0	62	0	62			
CUT TOTALS:	127	127	•	104	0	100			
AFTER CUT:	RAB	643	9000	0.15	0	2000		-	-

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ID Area Name	<u>a</u> .	Pop	NHSpWht	NHspBlk	NHSpBik NHSpWht18	NHspBlk18	Pop18	%Pop18	%Pop18 %PopNHspWhi	%PopNithspBilt
41 105,6035 4- 1		865	636	326	469	210	089	70.47	60.11	33.78
Area Name		Pop	Netapivint	NHspBlk	NHSpWh(18	NHspBlk18	Pop18			
4.072834	22015011103118	3	0	0	8	0	0			
3 100187	0112 602	28	28	2	22	2	24			
5.647052 22015(	112 601	31	28	0	20	6	23			
0 616166 22015	011103110	4	4	0	4	0	4			
2 807549 22015	11103106	23	23	0	17	0	17			
2 83552 22015	11103115	13	11	2	0	2	10			
0 116169 22015	11103116	0	0	0	0	0	0			
3 805941 22015	011103114	0	0	0	0	0	0			
	11103190									
0 583072 22015	112 608	17	17	0	14	0	14			
0.856308 22015	112 609	2	8	4	24	2	4			
1 523027 22015	112 613	32	32	0	23	0	23			
0.776164 22015	112 612	3.3	33	0	2	0				
1 008028 22015	112 626	60	8	0	C	0	2			
0.010396 22015	112 600									
0.346455 22015	0112 614	e	62	0		0				
5.033803 22015	11103122	10	0	0		0				
200 3.351626 2201501	11103134	0	0	0	0	0	0			
0.056824 22015	11103132	0	0	0		0				
0 764213 22015	11103130		8	0		0				
0 009684 22015	11103130	0		0		0				
0.014332 22015	11103140	0		0		0				
1 009174 22015	11103112	11		0		0				
318 0 01536 2201501	11103141	0		0		0				
0.00292 22015	11103131	0		0		0				
0.006079 22015	11103133	0	0	0		0				
0.003463 22015	11103123	*		0		0				
0 702500 22015	800	0		0		0				
4 904483 22015	-	8		-		-				
0.008225 22015	11103106	13	13	0		0				
0.075538 22015	11103107	0		0		0				
0.176313 22015	11103100	13		0		0				
0.008141 22015	11103105	0		0		0				
2 601203 22015	11103103	16	95	0		0				

2052 0 662533 22015011103101	0	0	0	0		0			
CUT TOTALS:	286	282	12		10	122 (			
AFTER CUT:	878	358		250	~		68.51%	63.13%	49.87%
PRECINCT 4-2, CUT 1									
ID Area Name	Pos	Nichaciwin	MHanRik	NH4colMn418	Mides Pills 18	Pon 18	S.Ponta	W.Donblistenlare	W.Donblistenfille
2883	1012	980	112	631	7	2 743	30.46		11.07
ID Area Name	Down	Na de coldons	Albinophie	Billian LA Partin	Nikia of Dile 4 B	Den 12			
28 0 468994	35	E Windows	The same of	o management	No. and delivery	40			
CULTOTALS	14		11	2		10			
AFTER CUT:	900	683	101	629	8	1002	70,44%	10.40%	10.12%
PRECINCT 4-2, CUT 2									
ID Area Name	Pos	NiespWht	Nevapelle	NH4c/Wht18	NH4soBik18	Pools	%Pool8	%.Pool/84solvht	W.PoolidingRit
42 35 32883	1012		112	631		-	70.45		11 07
ID Area Name	Bos	Nadental	Milesophie	NavaniAmeria	Albian Bill 18	Den 18			
84 2358711	30	0.1	UN KO	Ut.		A			
1 028262 22016011	9	40	96	2 %		2			
2 007077 2204604	3 5	2 6	3 5			1:			
0.000000 000000000000000000000000000000			14	0					
2300 0 022340 22015011103209L									
CIT TOTAL 8.	2	6.0	\$		2	9.0			
COL LOIMES.	2	ò	42	2	7	1.1			
AFTER CUT:	013	629	70	808	4	1 642	70.32%	90 80M	7.67%
PRECINCT 4-3A, CUT 1									
ID Aree Name	Pop	NHSpWm	NHapBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNirhspBik
431 24 86573 4-3A	1432	808	602	196	376		67.11	56.42	42.04
ID Area Name	Pop	NetspWht	NHspBik	NHSpWht18	NHspBik18	Pop18			
512 3 206368 22015011103701A	107	96	10	99		02 3			
1463 0.043500 22015011103709	-	100	0	*		4			
1464 0.416134 22015011103707	•	90	0	9		9			
1465 0.065185 22015011103705	10	10	0			9			
0 003572 22015011	0	0	0	0		0			
1467 0.002239 22015011103706	0	0	0	0		0			
2306 0 062814 22015011103703	3	60	0	80		10			
CUT TOTALS:	232	214	10	142	-	162			
AFTED CHT.	*****	2007	5000	36.7	2.0	000	20 2000	200 2002	200 000
	1600		-	200	100	000	27.10	40.00	

NORDERTALS

According	PRECINCT 4-3B, CUT 1									
428 6 3500000 4.38	Area	Pop	NHspWht	NHspBik	NHspWht18	NHSpBIR18	Pop18	%Pop18	%-PopNiNsoWhi	*PooNHeeRik
4.00 0.004522 22015011106316 72	432 6 350960	1656		304	1101	185	1209	73.01		16.36
### Descriptions of the control of t	Area	Pop	NetspWht	NHspBlk	NH4pWht18	NHsp8lk18	Poots			
800 0048265 22015011105319 125 119 0 0 0 0 0 11	2 85752 22015011	732	632	06	482	46	532			
\$80 004295 2015011105312 15 11 0 0 0 11 0 0 11 0 0 0 11 0 0 0 0	0.002521 22015011	0	0	0	0	0	0			
400 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	0.018914 22015011	15	11	0	40	0	11			
688 0 001449 22015011105316         41         41         0         31         0         15           689 0 0020542 22015011105316         19         16         0         12         0         15           689 0 0020542 22015011105316         17         12         5         6         2         6         3           589 0 0020542 22015011105316         17         12         5         6         2         6         3           581 0 004122 22015011105316         174         14         14         14         10         9         0         0         0         0         0         0         0         0         0         0         0         0         0         0	0.048265 22015011	125	119	9	100	PV	102			
650 0.020634 22015011105314 19 16 16 0 12 0 15 0 15 0 15 0 15 0 15 0 15 0 15	0.01419 22015011	41	41	0	31	0	31			
\$62 0.000650 22015011105314 82 79 3 60 3 63 63 63 64 65 78% 8 6 70 0.00050 22015011105314 14 14 0 9 0 0 9 0 9 0 0 9 0 0 0 0 0 0 0 0 0	0.020634 22015011	19	16	0	32	0	15			
\$52 0.008863 22015011105311 17 12 5 6 2 8 7771    CUTTOTALS: 1045 824 104 708 53 771 69% 65.78% 35 771    AFTER CUT: 011 408 200 303 132 430 7169% 65.78% 35 771    CUTTOTALS: 012 408 1332 304 1011 185 120 7301 8043    CUTTOTALS: 0205031105213 70 12 6 6 0 2 6 3 6 3 7 7 7 1 69% 65.78% 35 7 7 1 69% 65.78% 35 7 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 69% 65.78% 35 7 1 6 6 6 6 2 6 6 3 6 7 1 6 6 6 6 2 6 6 3 6 7 1 6 6 6 6 2 6 6 7 1 6 6 6 6 2 6 6 7 1 6 6 6 6 2 6 6 7 1 6 6 6 6 2 6 6 7 1 6 6 6 6 2 6 6 7 1 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6	0.047588 22015011	82	79	6	09	6	63			
### Partial Pop NetspWnt NetspBik NetspWnt18 NetspBik18 Pop18 %PopNetspWnt %PopNetspWnt NetspBik NetspWnt18 NetspBik18 Pop18 %Pop18 %PopNetspWnt %PopNetspWnt NetspBik NetspWnt18 NetspBik18 Pop18 %PopNetspWnt %PopNetspWnt %PopNetspWnt18 NetspWnt18 NetspBik18 Pop18 %PopNetspWnt %PopNetspWnt %PopNetspWnt18 NetspWnt18 Nets	0.008863 22015011	17	12	100	100	2	-			
### PATER CUT: 1045 824 104 708 53 771  ### PATER CUT: 611 408 200 303 132 438 7199% 6678% 32  ### Avea Name    Pop NehapWint NehapBik NehapWint18 NehapBik18 Pop18   %PopNehapWint %PopNehap   8043	0.004132 22015011	14	14	0	0	0	0			
## AFTER CUT:    Acta   Area	CUT TOTALS:	1045	924	101	708	63	771			
Pop NetapWhit NetapBik NetapWhitis NetapBiktis Poptis %Poptis %PoptisispWhitis %PoptisispWhitish NetapBiktish NetapBiktish Poptis %PoptisispWhitish %PoptishispWhitish NetapBiktish Poptis 73 01 80 43 80 43 80 43 80 43 80 43 80 43 80 43 80 43 80 43 80 43 80 40 80 80 80 80 80 80 80 80 80 80 80 80 80	AFTER CUT:	611	408	200			438	71.69%	66.78%	32 73%
Area Name Pop NHspWnft NHspBik NHspWnft18 NHspBik18 Pop18 SPOp18 SPOpNHspWnft MPopNHspWnft MPopN	PRECINCT 4-3B, CUT 2									
Access   A	ID Area Name	Pop	NHapWht	NHspBik	NPHspWht18	NHspBik18	Poots	Stoods.	Sepondification	W.Donblisten.Bilt
Avea         Name         Pop         NHspWhrt         NHspWhrt NHspWhrt         NHspWhrt <th< td=""><td>432</td><td>1656</td><td>1332</td><td>304</td><td>1011</td><td>185</td><td>1209</td><td>7301</td><td>80 43</td><td>18.36</td></th<>	432	1656	1332	304	1011	185	1209	7301	80 43	18.36
147385 22015011105208   214   154   60   117   40   157	<	Pop	NHapWhi	NHspBik	NHapWhi18	NHspBlk18	Pop18			
502 0.293449 22015011105213 79 72 6 60 2 63 2 63 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	1,47305 22015011	214	154	8	117	40	157			
Solid   Combotat 22015011105215   2	0.293449 220150111	70	72	9	09	24	63			
503 0.038298 22015011105214 49 47 1 32 1 34 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	0 000434 220150111	24	24	0	8	0	2			
SOB 017856 22015011105210         11         11         0         7         0         7           CUT TOTALS:         357         286         67         220         43         285           AFTER CUT:         1289         1044         237         791         142         944         72.67%         80.37%         18           ECINCT 4-3C, Cls. 1         Area Name         Pop NehapWitt NehapBit. NehapWittle NehapBit.le Pop16         %Pop16         %Pop16         %Pop16         %PopNehapWittle Welpowers         17         356         71.74         \$2.56           Area Name         Pop NehapWitt NehapBit. NehapWittle NehapBit.le Pop16         NehapWittle NehapWittle NehapBit.le Pop16         71.74         \$2.56         71.74         \$2.56           AFTER CUT:         10         2         6         2         7         9         71.74         \$2.56           CUT TOTALS:         10         2         17         36         71.74         \$2.56         7         9           AFTER CUT:         469         462         11         325         10         349         71.37%         pa.48%         2	0 038286 220150111	40	47		32	-	34			
CUITOTALS: 357 288 67 220 43 265  AFTER CUT: 1289 1044 237 791 142 944 72.67% 60.37% 18  ECINCT 4-3C, Cl-1 1  Area Name	0 017856 220150111	11	11	0	7	0	7			
CUT TOTALS:         357         286         67         220         43         265           AFTER CUT:         1290         1044         237         791         142         944         72.67%         80.37%         18           ECINCT 4-3C, Cl <sub>2+1</sub> 1         Area         Name         Pop         NehapWitt         NehapWittle         <	0.002532 220150111	2	2	0	2	0	2			
AFTER CUT:         1290         1044         237         791         142         944         72.67%         60.37%         18           ECINCT 4-3C, Cl-1 1         Ansa Name         Note Pop NehapWitt NehapWitt NehapWittle NehapWi	CUT TOTALS:	357	288	67	220	43	285			
ECINCT 4-3C, CL3.1   Pop NehlpWin NehlpWintle NehlpBik18 Pop18 %Pop18 %PopNehlpWint %PopNehlpp	AFTER CUT:	1299	1044	237	791	142	2	72.67%	80 37%	18 24%
Area Name Pop NehapWitt NehapWittle NehapBiktle Poptle %PopNehapWitte %PopNehapPikt %P	PRECINCT 4.3C, CO. 1									
Area Name Pop RéfigAVNic NétapAVNictie NétapBikilé Popilé 516 0.044625 22015011105151 10 2 8 2 7 9 CUT TOTALS: 10 2 8 2 7 9 AFTER CUT: 466 462 11 325 10 346 7137% par 48% 2	433 21.3932 4-3C	Pop 884	NetapWitt 464	Netsp8it.	NHupWhi18	NehapBik18	Pop18	%Pop18	%PopNP1spWht	M.PopNeHspBik
CUTTOTALS: 10 2 8 2 7 9 CUTTOTALS: 10 2 8 2 7 9 AFTER CUT: 400 462 11 325 10 340 7137% 5448%	Area Name	Pop	PO-TE PATRE	NHupBik	Nickeptyheria	NHsp8ik18	Pop18			0
480 482 11 325 10 340 7137% parage.	0.044625 22015011	10	2		2	7	•			
400 462 11 325 10 340 7137% 54.8%	CUT TOTALS:	10	2	100	2	7	00			
	AFTER CUT:	400	462	11	325	10	340	71.37%	S44 48%	2.25%

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1spBik	21.52								26.97%		<b>HspBik</b>	21.52						22.30%		HspBik	21.52					28,35%		-	27.88			
%PopNHspBik											%PopNHspBik									%PopNHspBik								200000000000000000000000000000000000000	ar opra			
%PopNHspl	75 94								70.79%		%PopNHspWht	75.94						75.07%		%-PopNHspWht	75.94					68.64%		Of Daniel Manager	70.61			
%Pop18	96.58								68.73%		%Pop18	66.58						66.20%		%Pop18	66.58					66,73%		070000	70.01			
Pop18	408	S S	\$	0	0	0	82	131	367		Pop18	408	Pop18	20	0	0	8	478		Pop18	488	Pop18	119	0	119	379		Dand	1165	Pop18	8	176
NNspBik18	110	P. STORES	0	0	0	0	9	17	. 83		NHspBlk18	110	NHspBik18	0	0	0	0	110		NHepBlk18	110	NHsp8lk18	0	0	0	110		BHU - Dille	293	NHspBik18	12	100
NHspWm18	375	CA A2	44	0	0	0	23	109	200		NHspWht18	375	NHspWhr18	20	0	0	20	355		NHspWht18	375	NHspWm18	116	0	116	250		Mills mild floor of	858	NHspWht18	24	14
NHspBik	161	11	0	0	0	0	9	17	144		NHsp8lk	181	NHspBlk	0	0	0	0	161		NHspBlk	161	NHspBIK	0	0	0	161		Alleadit	484	NHspBlk		164
NHspWhi	999	09	2	0	0	0	37	190	378		NHspWht	888	NHSpWnt	26	0	0	28	542		NHspWht	999	NHSpWht	177	0	177	391		Wilden all Albe	1175	NHspWm	2 1	16
	748	98	28	0	0	0	43	214	534		Pop	740	Pop	98	0	0	98	722		Pop	748	Pop	100	0	100	999		Dan	1001	Pop	9 9	263
NCT 4-8	730	1513 1 557505 22015011105170	0 582759 22015011	0.301477 2201501	1605 0 115913 220150111056058	1511 0.002138 22015011105150A	1632 0 206107 22015011106171	CUT TOTALS:	AFTER CUT:	PRECINCT 4-8, CUT 2	ID Area Name	46 17.7733 4-5	ID Area Name	0.418659 22015011	0 026032 22015011	1635 0.050978 22015011105904	CUT TOTALS:	AFTER CUT:	PRECINCT 4-5, CUT 3	ID Area Name	45 17,7733 4-5	Area Name	0.453728 22015011	84 0 009301 22015011105827B	CUT TOTALS:	AFTER CUT:	PRECINCT A.A. CHT.	O Area Name	46 327418	ID Area Name	0.138624 2201501	1617 0 56867 22015011105620A

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1.12%	%PopNHspBik 44.99	MPOpNHspBik 44.99
97.15%	MPopNHspWht 54 25	S2.17% SPOpNHspWht 54.25
71.31%	%Pop18 67.86	67.96% 67.96 67.96
148 17 67 64 464	Pop18 1423 1423 0 24 49 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	1350 1423 1423 96 96 96 97 123 123 123 123 123 123 123 123 123 123
100 14 100 100 100 100 100 100 100 100 1	NHSpBik18 619 0 0 0 0 0 0 0 0 0 0	NHspBik18 619 00 00 00 00 00 00 00 00 00 00 00 00 00
46 0 0 27 27 171 171 685	NHspWht18 792 NHspWht18 19 18 60 0	7257 725 NHspWht18 792 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
25 25 25 25 4 5 5 5 5 5 5 5 5 5 5 5 5 5	NHspBik 942 NHspBik 7 7 7 7	835 NHspBik 24 0 0 0 12 12 12
53 220 855	1136 1136 NHspWh 27 73 0 0 0 0 0 0	
216 225 226 226 226 226 226 226 226 226 22	999 999 984 984 985	
0 0 13143 22015011105833 0 0 1039 22015011105831 0 0 058726 22015011105834 0 0 028281 22015011105830 0 0 000046 22015011105830 CUT TOTALS:	PRECINCT 4-7, CUT 1  47 66.5166 4-7  10 Area Name  77 0.197271 220150110963026  79 1.168967 220150110963016  83 0.71972 220150110963018  87 0.054838 220150111096302A  215 0.390313 22015011105628  1598 0.462329 220150111056248  2393 0.008329 22015011096303D  CUT TOTALS:	
1629 1623 1631 1618	PREC 10 47 79 83 87 215 215 2393	PREC 10 47 124 124 128 128 128 128 128 128 127 172 172 172 172 173 173 173 173 173 173 173 173 173 173

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	51.10% %PopNHspBlik 1.69	1,69%	%PopNHspBik 25.72
	48.05% %PopNHspWht 92.37	92.37%	MPopNHspWht 73.30
	67 65% %Pop18 62.71	\$17.59	%Pop18
50000000	Pop18 74 Pop18	0 0 0 %	Pop18 1239 7 2 4 4 4 6 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7
00000000	596 NHspBik18 2 NHspBik18	0 0 0 0	NHspBik18 281 281 2 2 0 23 15 24 4 40
£ 0 0 0 0 4 4 4 6 90	S86 NHspWm18 69 NHspWm18	0 0 0 8	NHspWht18 947 NHspWht18 5 2 40 40 47 47 47 47 47 47 40 60 60 60 60 60 60 60 60 60 60 60 60 60
00000000	NHSpBik 2 NHSpBik 1	0 0 0 0	NHspBik 421 6 0 6 0 70 70 70 70 70 70 70 70 70 70 70 70 70
28 2 7 6 2 2 6 2 8 8 2 3 6 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	848 NHSpWht 109 NHSpWht	0 0 0 0	NHspWht 1200 NHspWht 6 0 0 4 4 4 4 4 10 10 0 0 0 0 0 0 0 0 0 0
320200000000000000000000000000000000000	Pop Pop Pop	0 0 0 0 0	769 9 769 9 760 9 760 9 760 9 760 9 760 9 760 9 760 9 760 9
0.022795.22015011098399A.0.133887.22015011098337.0.109695.22015011098338.0.143752.22015011098344.0.280186.22015011098349.0.091127.22015011098345.0.074243.22015011098345.	AFTER CUT: PRECINCT 4-8C, CUT 1  A83 4 242834 4 - 8C  D Area Name 1028 0 037585 22015010801399C	0.085813 22015010801314D 0.002521 22015010801399D 0.226891 22015010898104C 0.053427 22015010898199C CUT TOTALS: AFTER CUT:	PRECINCT 4-9, CUT 1  49 89 2806 4-9  10 Area Name  49 89 2806 4-9  183 1387418 22015011098132  185 1387418 22015011098111  241 0.384142 22015011098114  242 0.782391 22015011098118  245 5.973687 22015011098118  246 0.0032 22015011098133  160 4.749366 22015011098333  160 4.74936 22015011098357  177 3.256428 22015011098357  177 3.256428 22015011098353
205 150 157 171 173	PRECI ID 483		PREC 10 49 10 183 183 245 245 245 245 245 170 170 170 160 170 160 160 160 160 160 160 160 160 160 16

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13.64%	%PopNHspBlk 8.22 8.09%	%PopNHspBik 6.540897575 6.46%	%PopNHspBik 6.540697575 6.54%
865 38%	MPOPNHISPMIN 86.59	%PopNHspWht 90.1162796 90.16%	%PopNHspWht 80.1162786 90.12%
78.97%	%Pop18 66.40 66.60%	%Pop18 69 6948 69 6848	%Pop18 69 6948 69 6948
353	Pop18 3071 9071 106 106 52 41 239 2832	Pop18 959 10 10 10	Pop18 959 0 959
160	223 223 NHSpBik18 0 7 14 4 4 4 4 4 4 4	NHspBik18 57 NHspBik18 2 2 2	NHspBik18 57 NHspBik18 0
120 0 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	2885 2885 3885 38 94 36 203 2482	NHspWht18 874 NHspWht18 8 8	NHspWht18 874 NHspWht18 0
288 3 3 153	NHspBik 380 NHspBik 19 18 36 344	NHspBik 80 NHspBik 2 2	NHspBik 90 NHspBik 0
242 0 2 0 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	NHSpWhi 4005 NHSpWhi 55 150 53 64 322 3683	1240 NHSPWht 12 12 12 1228	NHSpWht 1240 NHSpWht 0
233 815 815 815 815 815 815 815 815 815 815	Pop 4625 Pop 58 164 77 73 373 4252	Pop 1376 Pop 14 14	Pop 1376 Pop 0
170 0.014848 22015011098354 202 0.086419 22015011008352 283 0.007638 22015011008311 244 0.008222 22015011098116 243 0.0383 22015011098117 CUT TOTALS: AFTER CUT:	PRECINCT 4-10, CUT 1  ID Area Name 410 2 508987 4-10  ID Area Name 1380 0.012197 22015010804604 1382 0.005055 22015010804605 1381 0.002965 22015010804605 CUT TOTALS: AFTER CUT:	PRECINCT 4-11C, CUT 1  ID Area Name 4113 1,91838 4-11C  ID Area Name 554 0,04082 22015011105516  CUT TOTALS: AFTER CUT:	PRECINCT 4-11C, CUT 2  ID Area Name 113 1.91839 4-11C  ID Area Name 1419 0.002115 22015011105517A  CUT TOTALS: AFTER CUT:

PREC.	POP	TOTAL	VOTING AGE NON-HISPANIC WHITE WHITE	G AGE SPANIC WRITE N	VOTIN NON-HI BLACK	VOTING AGE NON-HISPANIC LACK BLACK N	TOTAL REGIS.	2/95 REG WHITE	2/95 REGISTRATION WHITE WHITE &	2/95 REG BLACK	2/95 REGISTRATION BLACK BLACK &
1-1	1,939	1,465	1,278	87.2	131	8.0	863	800	92.7	50	5.8
1-2	1,985	1,428	1,227	85.9	114	8.0	965	866	89.7	86	9.00
2-3	1,966	1,449	1,312	9.06	9.0	6.2	888	838	24. 20	4	
1-4	1,972	1,450	1,276	88.0	95	9.9	1,030	940	91.3	74	7.2
1-5	1,096	783	719	91.8	23	2.9	538	513	95.9	on ed	3.6
2-1	2,047	1,401	837	59.7	540	38.5	066	569	57.5	413	41.7
2-2	1,124	797	766	96.1	10	1.3	896	888	98.7	4	0.5
2-3	3,774	2,594	2,237	86.2	271	10.5	1,640	1,520	92.7	97	
2-4	2,446	1,661	1,572	94.6	ege ege	2.7	1,349	1,309	97.0	24	90
2-5	1,760	1,266	647	51.1	582	46.0	577	314	S. 4.	261	45.2
2-6	1,684	1,198	862	72.0	284	23.7	528	390	73.9	134	25.4
2-7	1,821	1,452	1,337	92.1	76	N.	825	802	97.2	0,	2.3
2-8	987	644	130	20.2	508	78.9	311	64	13.8	268	86.2
2-9	1,928	1,232	858	69.6	6. (8)	28.3	686	592	86.3	60	
2-10	950	768	751	97.8	10	2.3	657	647	98.5	00	
2-11	2,007	1,526	1,286	84.3	181	11.9	638	573	89.8	62	
2-12A	373	306	286	93.5	16	5.2	155	146	94.2	on	5.8
2-128	633	538	480	89.2	41	7.6	292	274	93.8	13	. s.
2-12C	1,568	1,238	927	74.9	255	20.6	400	351	87.8	47	11.8

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2/95 REGISTRATION BLACK BLACK N	9.7	8.8	57.6	5.1	10.8	13.0	38.9	e-4 	1.4	21.4	1.6	2.8	6.3	6.3	3.4	26.0	37.4	28.1	60.3
2/95 REGI	57	65	486	44	29	73	177	S	4	121	24	6	12	82	ເກ	155	222	110	561
TRATION WHITE %	89.1	90.4	41.1	93.1	87.0	84.6	6.09	97.8	98.2	17.9	97.2	36.5	93.7	93.3	95.9	74.0	62.5	71.9	39.4
2/95 REGISTRATION MHITE MHITE %	521	667	347	808	234	474	277	440	273	441	827	307	177	1,234	140	441	371	281	367
TOTAL REGIS.	585	738	844	868	269	260	455	450	278	566	851	318	189	1,323	146	596	594	391	931
AGE PANIC BLACK &	11.3	12.2	32.2	5.3	16.8	11.0	44.2	3.3	3.4	25.8	3.6	8.7	0.0	9.4	2.7	29.4	41.4	22.5	60.2
VOTING AGE NON-HISPANIC BLACK BLACK	113	185	1,191	86	104	115	242	16	13	519	44	36	0	120	12	231	359	128	818
AGE PANIC WHITE	85.7	84.4	61.4	88.5	76.5	82.4	53.5	94.3	94.3	67.6	92.0	1.06	97.5	88.6	91.6	70.3	57.6	76.3	38.3
VOTING AGE NON-HISPANIC WHITE WHITE	856	1,276	2,275	1,319	474	863	293	460	365	1,358	1,115	373	195	1,129	404	553	499	435	520
TOTAL	666	1,512	3,703	1,491	620	1,047	548	488	387	2,010	1,212	414	200	1,274	443	787	867	570	1,359
TOTAL	1,427	2,122	5,440	2,012	958	1,607	746	694	542	2,912	1,611	550	295	1,672	491	1,074	1,217	740	2,088
PREC.	2-13	2-14	2-15	2-16	2-17A	2-17B	2-18A	2-188	2-18C	2-19	2-20	2-21A	2-21B	2-22	2-23	3-1	3-2	3-3	3-4

TRATION BLACK N	26.7	11.2	41.0	13.0	7.5	6.5	6.5	18.2	28.4	37.8	5.2	4.0	0.0	17.3	9.8	2.5	80	8.9
2/95 REGISTRATION BLACK BLACK N	143	69	241	110	12	63	1,30	52	253	332	12	12	0	14.00	174	15	3.4	9.6
WRITE N	73.3	88.3	58.5	86.7	92.5	93.5	92.7	81.5	71.1	61.8	94.0	95.3	100.0	82.2	89.4	9.96	92.5	20.7
2/95 REGISTRATION WHITE N	392	543	344	734	148	29	1,864	233	633	543	218	283	95	703	1,827	589	540	640
TOTAL REGIS.	535	615	588	847	160	31	2,010	286	068	879	232	297	95	855	2,043	610	584	494
AGE PANIC BLACK N	30.9	10.1	39.3	15.3	4.8	4.1	6.7	22.1	25.2	43.5	1.9	11.9	2.7	22.7	7.3	1.6	6.8	6.9
VOTING AGE MON-RISPANIC BLACK BLACK	210	72	378	185	17	2	203	110	293	619	r.	45	2	281	223	13	60	57
AGE PANIC WRITE &	69.0	88.5	59.0	83.6	91.3	95.9	91.1	75.3	73.5	55.7	96.5	86.8	93.2	76.4	87.4	96.8	89.4	91.1
VOTING AGE HON-HISPANIC WHITE WHITE	469	631	267	1,011	327	47	2,750	375	856	792	251	329	69	947	2,685	908	794	874
TOTAL	680	713	1961	1,209	358	49	3,020	498	1,165	1,423	260	379	74	1,239	3,071	833	888	959
TOTAL	965	1,012	1,432	1,656	499	72	4,448	748	1,664	2,094	399	545	118	1,637	4,625	1,215	1,325	1,376
PREC.	4-1	4-2	4-3A	3-38	4-3C	4-3D	4-4	4-5	4-6	4-7	4-8A	4-83	9-8C	Q) - 48	4-10	4-11A	4-118	4-110

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PARTIC BLACK N	9.	8.0	6.2	9.9	14	38.5	1.3	10.5	2.7	46.0	23.7	14	78.9	26.3	2.3	11.9	15.0	11.3	12.3	32.2	8.8	13.1
VOTING AGE NON-RISPARIC DIACE DIACE	131	116	9.0	95	23	540	10	272	44	582	284	76	808	348	10	101	312	113	105	1,191	9.6	219
PARIC WRITE %	87.2	85.9	9.06	88.0	91.8	59.7	1.96	86.2	94.6	51.1	72.0	92.1	20.3	69.6	97.6	84.3	61.3	65.7	84.4	61.6	0.00	80.2
VOTING AGE NOS-RISPARIC WRITE WRITE	1,278	1,227	1,312	1,276	71.9	837	766	2,237	1,572	547	862	1,337	130	050	751	1,286	1,693	988	3,276	2,275	1,319	1,337
TOTAL	1,465	1,428	1,469	1,450	783	1,401	797	2,594	1,661	1,266	1,198	1,452	644	1,232	760	1,526	3,082	666	1,512	3,703	3,493	1,667
TOTAL	1,939	1,985	1,966	1,972	1,096	2,047	1,124	3,774	2,446	1,760	1,684	1,821	206	1,928	050	2,007	2,574	3,427	2,122	5,440	3,012	2,565
PREC.	1-1	1-2	2-3	1-6	1-5	2-1	2-3	2-3	2-4	2-5	2-6	2-7	2-8	2-9	2-10	2-11	2-12	2-13	2-24	2-15	2-16	2-27

PRECINCTS 1990

AGE PARTC BLACK N	19.0	25.8	3.6	8.9	97	2.7	29.4	41.4	22.5	60.2	30.9	10.1	22.6	6.7	22.1	25.2	43.5	7.3	22.7	7.3
VOTING AGE NOM-HISPANIC BLACK BLACK	272	819	44	36	120	12	231	359	128	818	210	72	5.82	203	110	293	619	52	283	223
VOTING AGE HOM-HISDAANIC WALTE NHITE &	20.02	67.6	92.0	92.5	88.6	91.6	70.3	57.6	76.3	38.3	69.0	88.8	75.7	91.1	75.3	73.5	55.7	91.0	76.4	87.4
	1,110	1,350	1,115	899	1,129	404	553	499	435	520	469	631	1,952	2,750	375	950	792	649	947	2,685
TOTAL	1,423	3,010	1,212	614	1,274	441	787	198	570	1,359	089	713	2,577	3,020	498	1,165	1,423	713	1,239	3,071
TOTAL	3,982	2,912			1,672	491	1,074	1,217	740	2,088	965	1,012	3,659			1,664	2.094	1,062	1,637	4,625
PREC.	2-18	1.	1 4		2-22	2-23	3-1	3-2	5-3	3-4	4-3	1	1	1 6	8-8	9-6	4-7	8-9	6-9	4-10

## PRECINCTS 1990

PAGE PLACE N	4.9
VOTING NON-NIS BLACK	130
G AGE SPANIC MNITE N	92.3
POTING BON-NISH WHITE	2,474
TOTAL	2,680
TOTAL	3,916
PREC.	6-11

N.S. northead department of the san

## CURRENT SCHOOL BOARD PLAN

DIST.	TOTAL	TOTAL NON-HISPANIC POP WHITE WHITE &	TOTAL HISPANIC E WHITE &	NON-H WHITE	VOTING AGE NON-HISPANIC HITE WHITE %	NON-H BLACK	TOTAL NON-HISPANIC ACK BLACKS	NOTEN NON-HI BLACK	VOTING AGE NON-HISPANIC ACK BLACK®	TOTHER	TOTAL OTHERS	NOTT	VOTING AGE HER OTHER S
-	9,233	7,667	83.0	5,312	84.3	1,225	13.3	759	12.0	341	3.7	233	10
64	7,889	6,446	81.7	4,457	83.1	1,289	16.3	803	15.0	154	2.0	105	2.0
m	13,598	11,764	86.5	8,347	87.2	1,490	0.11	866	10.4	344	2.5	232	2.4
77	6,552	3,431	52.4	2,614	56.7	3,044	46.5	1,941	42.1	11	1.2	53	1.2
W	86,498	5,313	81.8	3,937	85.3	926	14.7	507	11.0	229	3.5	172	5.5
9	7,963	6,253	78.5	4,553	9.62	1,579	8.61	1,059	18.6	131	1.6	680	1.6
1	5,867	3,156	53.8	2,458	60.5	2,559	43.6	1,500	36.9	152	2.6	103	50
00	6,516	4,987	76.5	3,854	80.0	1,140	17.5	692	14.4	389	0.9	272	5.6
0	6,229	4,610	74.0	3,612	79.3	1,364	21.9	759	16.7	255	4.1	184	4.0
10	6,054	3,867	63.9	2,757	9.59	1,811	29.9	1,192	28.4	376	6.2	251	6.0
1.1	4,085	3,428	83.9	2,630	6.98	458	11.2	257	85.	861	4.9	141	4.7
12	5,604	4,890	87.3	3,599	88.4	386	6.9	259	6.4	328	8.9	213	5.2



LP. Alexa Constation and additional and (ACDIV. 14 SECT.)

St breets

# PROPOSED SCHOOL BOARD PLAN

VOTING AGE.	1.4	2.2		-	3.4	6	2.8	97. 97.	4.0	6.2	5.0	4.6
VOTER	71	114	28	X	175	126	138	265	215	323	254	226
TAL. OTHER %	600 600	2.2	6.1	1.1	3.4	2.3	2.9	3.6	4.1	6.4	5.5	4.7
TOTAL OTHER OTH	88	191	129	78	262	172	202	384	293	475	386	335
IG AGE. ISPANIC BLACK %	27.0	9.7	22.5	40.9	8.6	3.5	36.1	17.0	11.3	24.6	6.3	7.4
VOTING AGE NON-HISPANIC BLACK BLACK	1,365	200	1,074	1,990	445	189	1,763	168	609	1,277	322	361
TOTAL NON-HISPANIC ACK BLACK \$	28.8	6.01	24.2	45.0	9.6	3.7	43.7	21.1	14.9	26.7	7.1	8.4
NON-HI BLACK	2,069	818	1,636	3,109	730	272	3,058	1,457	1,073	1,989	499	165
VOTING AGE NON-HISPANIC HITE WHITE \$	71.6	1.88	75.7	58.0	1.88	94.3	0.19	77.6	84.8	69.2	88.7	88.0
NOTTEN NON-III WHITE	3,626	4,555	3,623	2,817	4,581	5,169	2,977	3,793	4,578	3,594	4,534	4,283
TOTAL. NON-HISPANIC HITE WHITE \$	6.69	87.0	73.9	53.8	87.0	0.16	53.4	73.3	81.1	6.99	87.4	86.9
NON-HI WHITE	8,020	6,542	4,999	3,716	6,615	7,000	3,732	8,005	5,853	4,988	6,134	6,155
TOTAL	7,187	7,521	6,764	6,903	7,607	7,444	6,992	6,899	7,219	7,452	7,019	7,081
DIST.	1	2	3	4	8	9	7	90	0	10	=	12

SELECT SERVICE

A.S. Asperdimental Section 519

1

### NAACP PLAN

DIST.	TOTAL	NON-B WHITTE	TOTAL NON-HISPANIC WHITE WHITE &	NON-H WHITE	VOTING AGE NON-HISPANIC HITE WHITE S	NON-H BLACK	TOTAL. NON-HISPANIC ACK BLACK %	VOTING AGE NON-HISPANIC BLACK BLACK	G AGE SPANIC BLACK S	OTHER	TOTAL OTHER OTHER %	VOTER	VOTING AGE HER OTHER &
	6,874	2,792	40.6	2,198	9.94	3,908	86.9	2,394	20.7	174	2.5	129	6
	6,875	2,487	36.2	1,834	39.6	4,311	62.7	2,737	30.1	77	3.8	63	1.4
	988'9	3,931	57.1	2,734	58.6	2,595	37.7	1.696	36.4	36	5.2	234	8.0
	7,289	6,357	87.2	4,455	88.1	645	8.9	408	8.1	287	3.9	186	3.0
	7,002	6,107	87.2	4,472	978.6	522	7.5	335	9.9	373	5.3	242	9
	7,188	5,878	81.8	4,567	85.8	1000	13.9	940	10.1	310	4.3	218	
	6,823	5,966	87.4	4,716	89.4	355	8.1	337	6.4	300	4.4	223	4.2
	7,457	6,167	82.7	4,278	84.8	980	12.7	539	10.7	340	4.6	227	4.5
	7,427	979,9	6.68	4,942	6.19	584	7.9	309	8.8	167	2.3	126	6.3
	7,414	6,011	81.1	4,435	83.3	1,116	1.51	702	13.2	287	3.9	187	3.5
	7,395	6,700	9.06	4.581	91.2	514	7.0	324	6.5	181	2.5	121	*
	7,458	6,740	90.4	4,918	0.19	109	8.1	405	7.5	1117	1.6	22	99



MARKET SERVICES

A handbrotefalabase force as

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## COOPER PLAN

DEST.	TOTAL	TOTAL NON-HISPANIC FOP WHITE \$	TOTAL. HISPANC WHITE %	NON-B WHITE	VOTING AGE NON-HISPANIC HITE WHITE S	NON-III BLACK	TOTAL. NON-HISPANIC ACK BLACKS	VOTING AGE NON-HISPANIC BLACK BLACK	S AGE SPANIC BLACKS	OTHER	TOTAL A OTHERS	VOTER	VOTING AGE HER OTHER %
***	6,840	6,271	92.0	4,603	92.8	393	(%)	235	4.7	176	3.6	123	9
21	6,840	2,543	37.2	1,975	43.8	4,135	80.8	2,427	53.8	162	2.4	106	2.4
69)	7,057	5,756	81.6	4,574	64.7	1.021	14.5	622	11.5	280	4.0	200	39.00
4	7,043	5,409	76.8	4,031	80.4	1,223	17.4	692	13.8	411	5.8	296	8.9
8	7,475	6,524	87.3	4,937	88.7	548	7.3	359	6.5	403	5.4	271	6.4
9	988'9	6,267	0.16	4,702	91.4	454	9.9	327	6.4	165	2.4	114	2.2
7	7,473	6,391	85.5	4,382	86.9	792	9.01	468	9.3	290	3.9	198	3.9
90	6,839	2,750	40.2	2,010	43.6	4,012	58.7	2,543	55.2	11	1.1	50	1.3
0	7,496	6,448	86.0	4,681	87.2	927	12.4	909	11.3	121	1.6	8	3.6
10	7,335	5,794	79.0	3,983	9.66	1,127	15.4	734	14.7	414	5.6	267	8.8
=	7,399	6,423	86.8	4,509	88.0	602	8.2	359	7.0	374	5.0	257	5.0
12	7,405	5,236	70.7	3,743	72.5	2,067	27.9	1,356	26.3	102	1.4	19	em (%)

# BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

which we have election returns. It does not include, however, elections for offices in the City of Shreveport as there is only one precinct in Bossier Parish (Precinct 2-23), which is located in Shreveport. This precinct represents only a small fraction of the period 1979 through 1993 for local offices featuring one or more black candidates, for The attached chart reflects virtually all elections in Bossier Parish during the city, the vast majority of which is located in Caddo Parish.

The abbreviation to the left of the dash in the "Dist." column denotes the jurisdiction, as follows:

- B Benton
- BC Bossier City
- H Haughton
- Court (the 26th JDC consists of Bossier Parish and Webster Parish; the data reported reflect the results of the election only in Bossier Parish) Judicial District JDC
- PD Plain Dealing
- PJ Bossier Parish Police Jury
- SB Bossier Parish School Board

The abbreviation to the right of the dash in the "Dist." column denotes the office being filled and/or the district number (or letter) for the office, as follows:

- Board of Alderman
- At Large position
- C City Council
- M Mayor

BOSSIER	IER PARISH	ELECTIONS	FEATURING BLACK CANDIDATES	1979-1993	3
Election	Dist.	*Black (Census)	Candidate(s)	Race	Vote (%)
05/19/79 Sp.Pri.	BC-C2	39.4 (1980)	John Burnes	M	60 (12.2)
			Johnny Gipson	B	201 (40.9)
			Anthony Provenza	3	205 (41.7)
			J.G. Stahl	×	26 (5.3)
06/23/79 Sp.Gen.	BC-C2	39.4 (1980)	Johnny Gipson	m	324 (48.9)
			Anthony Provenza	W	339 (51.2)
10/27/79 Primary	D-54	42.7 (1980)	Johnny Gipson	В	459 (55.2)
			Thomas McDaniel (I)	×	373 (44.8)
04/05/80 Primary	B-A2	57.1 (1990)	Oscar Grubb	W	54 (48.2)
			Rutha Richardson	æ	58 (51.8)
10/17/81 Primary	SB-C	28.1 (1980)	Floyd Coleman	æ	389 (38.5)
			Annie Johnston	M	401 (39.7)
			Ken Larsen	×	150 (14.8)
			Nonnie Moak	W	71 (7.0)
11/28/81 Runoff	SB-C	28.1 (1980)	Floyd Coleman	B	584 (40.5)
			Annie Johnston	M	858 (59.5)
04/03/82 Primary	PD-A2	Data unavail.	Tommie Nance	B	Unopposed
10/22/83 Primary	PJ-7	29.3 (1980)	James Abrams	Ø	358 (22.1)
			Jerry Baker	M	385 (23.8)
			Pete Glorioso	3	875 (54.1)

BOSSIER	IER PARISH	ELECTIONS	PEATURING BLACK CANDIDATES	1979-1993	3
Election	Dist.	*Black (Census)	Candidate(s)	Race	Vote (%)
10/22/83 Primary	PJ-10	37.9 (1980)	Jerome Darby	B	407 (33.0)
			Johnny Gipson (I)	0	260 (21.0)
			Thomas McDaniel	3	568 (46.0)
11/19/83 Runoff	PJ-10	37.9 (1980)	Jerome Darby	83	328 (53.2)
			Thomas McDaniel	*	289 (46.8)
04/07/84 Primary	B-A1	75.5 (1990)	J.C. Goines, Sr.	83	58 (46.8)
			Thelma Harry	8	66 (53.2)
04/07/84 Primary	B-A2	57.1 (1990).	Rutha L. Richardson	B	Unopposed
04/07/84 Primary	H-AAL	30.2 (1980)	James Bell (E)	8	396 (14.8)
			Curt Camp (D)	M	110 (4.1)
			Cashie Cole, Jr. (R)	m	237 ( 8.8)
			John Garland, Jr. (R)	28	213 (7.9)
			Thomas Hill (D)	M	200 (7.5)
			Conrad Isom (E)	M	357 (13.3)
			Mike Keith (E)	×	160 ( 5.7)
			Billy Joe Maxey (R)	3	230 (8.6)
			Johnny Ruffin (D)	(3)	211 (7.9)
			Shirley Stephens (E)	3	341 (12.7)
			M.H. Walker, Jr. (R)	3	228 (8.5)

BOS	SIER PARI	BOSSIER PARISH ELECTIONS FEAT	PEATURING BLACK CANDIDATES	1979-1993	93
Election	Dist.	\$Black (Census)	Candidate(s)	Race	Vote (%)
05/05/84 Runoff	H-AAL	30.2 (1980)	Cashie Cole, Jr.	8	236 (41.0)
			John Garland, Jr.	M	96 (16.7)
			Billy Joe Maxey	W	133 (23.1)
			M.H. Walker, Jr.	×	111 (19.3)
03/30/85 Primary	BC-C3	17.0 (1990)	Wanda Bennett	M	1,033 (82.8)
			Odis Easter	a	214 (17.2)
04/05/86 Sp.Pri.	B-A2	57.1 (1990)	Zella Mayfield	B	Unopposed
09/27/86 Primary	SB-J	30.1 (1990)	Jeff Darby	8	343 (45.7)
			Ruth Sullivan (I)	2	408 (54.3)
10/24/87 Primary	PJ-10	31.9 (1990)	Jerome Darby (I)	B	506 (60.5)
×			Johnny Gipson	В	146 (17.4)
			Thomas McDaniel	W	105 (22.1)
10/1/88 Primary	JDC-26	20.1 (1990)	Dewey Burchett, Jr.	3	11,163 (64.3)
		only	Bobby Stromile	ρĐ	6,197 (35.7)
10/01/88 Primary	PJ-3		Jerry Chandler	M	449 (20.5)
			Larry Sharrah	3	523 (23.9)
			Marshall Smith	M	203 ( 9.3)
			Jessie Turks	8	0
			Don Whittington	M	1,014 (46.3)

BOSSIER	IER PARISH	ELECTIONS	PEATURING BLACK CANDIDATES	1979-1993	13	
Election	Dist	\$Black (Census)	Candidate(s)	Race	Vote	(8)
10/1/88 Primary	H-M		Lurlene Butler	×	299	(49.3)
			Harold Lee	M	308	(50.7)
			R.G. Aldricht	M	273	(10.01)
			James Bell	B	362	(13.2)
			Cecil L. Blackstock	W	343	(12.5)
10/01/88 Primary	Benton	41.3 (1990)	Raymond Champion	M	264	(39.2)
	Police		J.W. Hollis	M	165	(24.5)
			Robert T. Smith	g	245	(36.4)
11/08/88 Runoff	Benton	41.3 (1990)	Raymond Champion	×	467	(88.0)
	Police		Robert T. Smith	9	330	(42.0)
04/01/89 Primary	BC-CAL	18.0 (1990)	Sonny DePrang (E)	M	4,750	(25.3)
			Jim Johnson (E)	38	7,168	(38.2)
			Randy Rowe (D)	38	4,619	(24.6)
			Don Rushing (D)	B	2,222	(11.8)
04/01/89 Primary	BC-C4	18.9 (1990)	Bill Schwartz	М	922	(49.8)
			Earl Smith	B	137	(7.4)
			Billy Williams	3	791	(42.8)
04/01/89 Primary	BC-C2	25.6 (1990)	Donald Brown	X	449	(42.0)
			Jeff Darby	9	356	(33.3)
			Anthony Provenza (I)	3	265	(24.8)

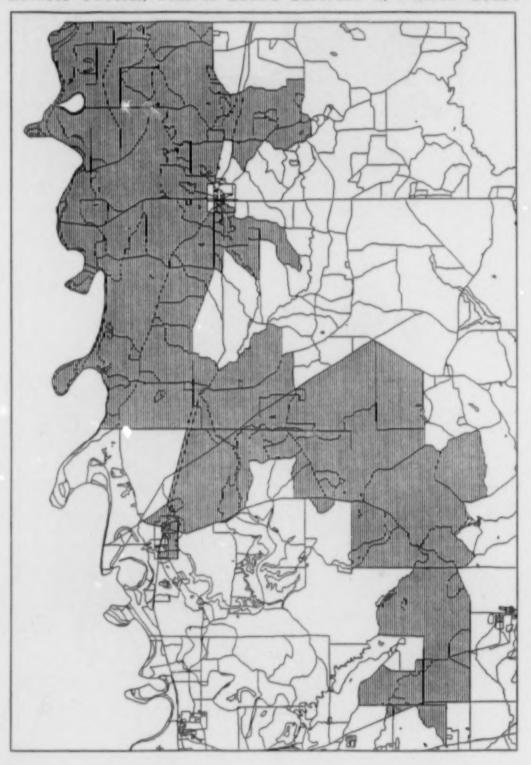
BOSS	BOSSIER PARISH	ELECTIONS	FEATURING BLACK CANDIDATES	1979-1993	2.0
Election	Dist.	\$Black (Census)		Bace	Vote (%)
04/29/89 Runoff	BC-C2	25.6 (1990)	Donald Brown	×	595 (48.5)
			Jeff Darby	m	
10/06/90 Primary	SB-J	30.1 (1990)	Johnny Gipson	83	(46.
			Ruth Sullivan (I)	32	489 (53.2)
10/19/91 Primary	PJ-7	43.9 (1990)	Pete Glorioso (I) .	38	(64.
			Leonard Kelly	8	604
10/19/91 Primary	PJ-10	26.9 (1990)	Jerome Darby (I)	B	poole
10/19/91 Primary	H-M	27.9 (1990)	Cecil Blackstock (I)	M	458 (73.6)
			Mark Hill	B	67 (10.8)
			George Hunter	38	97 (15.6)
03/10/92	M-B	41.3 (1990)	Thelma Harry	8	
			Joe Stickell	32	
			Ronny Vaughn	M	6 ( 1.0)
10/03/92	H-AAL	27.9 (1990)	Pee Wee Anderson	3	294 (15.9)
			Cashie Cole, Jr. (I)	8	(13.
			Jack Hicks	W	323 (17.5)
			Mike Hollis	32	264 (14.3)
			Frank Jones	×	158 ( 8.6)
			Billy Joe Maxey	28	288 (15.6)
			Elbert Winfield	00	114

Election Dist.		PART ALAS DESCRIPTIONS CONTRACTOR DESCRIPTIONS CONTRAC	200 2100	9
	\$Black (Census)	Candidate(s)	Race	Vote (%)
04/03/93 Special SB-K	11.3 (1990)	Jerome Blunt (I)	В	93 (23.9)
		Juanita S. Jackson	×	296 (76.1)
10/16/93 Special BC-C1	7.5 (1990)	Donald Ardoyno	3	436 (29.8)
		Gordon Blackman	N	881 (60.1)
		Will Jones	В	148 (10.1)
10/16/93 Special BC-C2	42.2 (1990)	Jeff Darby (I)	Ø	416 (46.7)
		"Jim" Sawyer	M	474 (53.3)

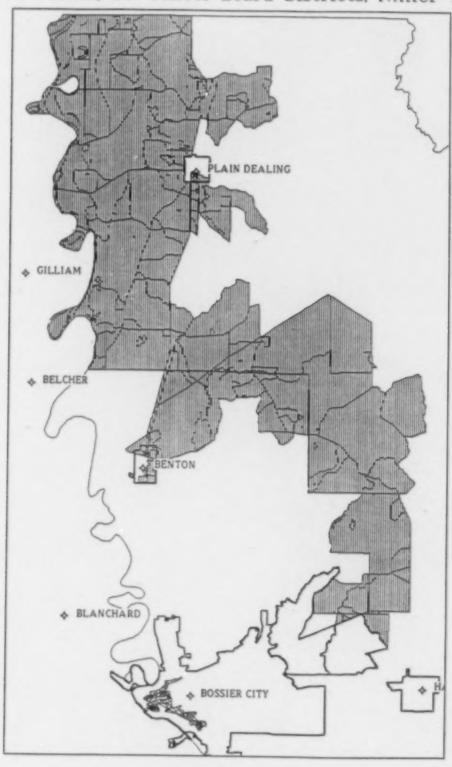


Bossier Parish, School Board District 1, NAACP Draft

Bossier Parish, School Board District 2, NAACP Draft



Bossier Parish, LA. School Board Districts, NAACP Draft



	Boss	ier Pari	sh, LA.	School	Bossier Parish, LA. School Board Districts, NAACP Draft	ricts, NAA	CP Draft		
POP	PctHSP		PCTBEH	PCTNHW	Pothspie Potnybie Potbanie	PctNHB18	PctB4H18	PCTNHW18	DEVIAT
6913	1.42	56.76	58.18	40.72	1.52	50.57	52.08		-3
6854	0.85		63.47	36.26	1.00	58.97	59.97	39.67	7



Nos. 98-405, 98-406

FILED

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In The

#### Supreme Court of the United States

October Term, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, et al.,

Appellants,

V.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

#### BRIEF OF APPELLEE

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#### STATEMENT OF THE CASE

While appellants paint the disturbing picture of a monolithic white majority imposing a redistricting plan which permanently disenfranchises black voters, this picture bears little resemblance to the facts or the actual electoral results in Bossier Parish. In adopting the plan at issue here, the Bossier Parish School Board (the "Board") selected the only plan presented to it that conformed to state law, since private appellants' maximization plan (the "NAACP plan") concededly constituted a facial violation of state law, as well as numerous other neutral redistricting criteria. J.A. 376-77 (La. Rev. Stat. § 17:71.3(E)(1)). The plan that was chosen had already been precleared by the Department of Justice just one year before. J.A. 86. In operation, the Board's plan has resulted in the election of three black members to the Board.

Bossier Parish is governed by a Police Jury, the 12 members of which are elected from single-member districts for consecutive four-year terms. Although no electoral district of the Police Jury has ever had a majority of black voters, Jerome Darby, a black resident of Bossier Parish, had been elected three times (the last time without opposition) by 1992 to represent a majority-white district as a member of the Police Jury. App. 79a. Another black representative preceded Mr. Darby in that district. J.A. 516-17.

On April 30, 1991, all members of the Police Jury, including Jerome Darby, its black member, approved a redistricting plan for the Police Jury containing two districts with substantial black populations, but no district with a black majority. Specifically, District Four was 45.2% black, and District Seven was 43.9% black. App. 164a ¶ 59. The plan was submitted to the Justice Department on May 28, 1991,

<sup>&</sup>lt;sup>1</sup> In this brief, citations are to the Appendix ("App.") filed with the jurisdictional statements in this appeal ("U.S. J.S."), ("A-I J.S."), to the Joint Appendix ("J.A."), to the United States and appellant-intervenors' briefs ("U.S. Br."), ("A-I Br.") and Oppositions to Motion to Dismiss ("U.S. Opp."), ("A-I Opp."), and to the trial transcript in the court below, No. CR 94-445 (D.D.C.) ("Tr.").

and on July 29, 1991, the Attorney General precleared it. Contrary to the misleading representations of appellants, the concerns of the black community were conveyed to the Justice Department prior to preclearance. See Hawkins Testimony at 6 ¶ 11.

Given that the Board and the Police Jury had shared the same district boundaries until 1980, the Board approached the Police Jury to formulate a common redistricting plan. App. 81a. The Police Jury rejected this overture. App. 107a. State law expressly prohibited the Board from changing, splitting, or consolidating the precincts established by the Police Jury for the Police Jury's 1991 redistricting plan. J.A. 376-77 ("The boundaries of any election district for a new apportionment plan from which members of a Board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1."). Thus, it would have been a facial violation of state law for the Board to adopt the NAACP plan or, for that matter, any plan that created a black majority district, because it is stipulated that: "It is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines." App. 195a ¶ 152. The failure to abide by this mandatory state law requirement would have rendered the Board's plan "null and void." J.A. 377.

Appellants assert that the *Police Jury* could have split precinct lines so that the NAACP plan might be adopted. This is demonstrably false. Under state law, the Board was required to redistrict *prior to December 31*, 1992. J.A. 88-89; J.A. 406-07 (La. Rev. Stat. § 17:71.5) (state law required redistricting to be complete on December 31 of the second year following the year in which the President received the census report, which under 13 U.S.C. § 141(b), was 1990). And under state law, the Police Jury could only make changes to its existing precincts *after December 31*, 1992. J.A. 389 (La. Rev. Stat. § 18:532.1(H)(1)). Thus, it was *impossible* for *either* the Board or the Police Jury to sanction any precinct splits prior to the mandatory deadline for the Board to adopt a redistricting plan. This requirement under state law that Boards and Police Juries use the *same* precincts as "building

blocks" for their districts is, of course, entirely rational.<sup>2</sup> Splitting precincts by divergent district lines engenders substantial costs and creates significant voter confusion. App. 107a; see Bush v. Vera, 517 U.S. 952, 974-75 (1996). Thus, even assuming (as the district court did to give appellants every benefit of the doubt) that the Police Jury somehow could have retroactively created 65 additional precincts to render the NAACP plan lawful, neither it nor the Board had any rational reason to do so.

Moreover, the conclusion that state law prohibited the adoption of any plan creating a black-majority district was uniformly acknowledged by the parties at the time the Board was considering which plan to adopt. Specifically, the Board was correctly advised both by its cartographer and the Parish's District Attorney during the September 3, 1992 meeting where the NAACP plan was presented that its massive number of precinct splits violated state law. App. 83a-84a; App. 179a ¶ 102. Likewise, the NAACP itself acknowledged this state law prohibition in 1992, and merely contended that the Supremacy Clause of the United States Constitution required the Board to ignore state law. J.A. 195-96.

The NAACP plan included two majority-black districts, the maximum possible number of such districts and roughly proportional (2/12) to the Parish's black voting age population of 17.6%. App. 83a. The plan was drawn by William Cooper for the exclusive purpose of "creat[ing] two majority black districts." J.A. 371. The NAACP plan subordinates traditional redistricting principles, because it is not compact,<sup>3</sup>

Although the Police Jury and Board used different district lines for the first time in the 1980s, they had never split precinct lines, and the unrebutted evidence is that none of the redistricting plans submitted for the Board's consideration by its cartographer created such splits. J.A. 250-51; Tr. (Myrick) at 118.

<sup>&</sup>lt;sup>3</sup> A stipulation suggests that it was obvious, apparently to some unnamed members of the Police Jury in 1991, that one "reasonably compact" majority-black district could be established within Bossier City. App. 154a ¶ 36. This subjective assessment of some of the Police Jurors

splits all three town boundaries in the Parish and dramatically departs from the Police Jury districts. J.A. 458, 464, 509-10. In direct contravention of Louisiana law, the NAACP plan splits 46 precincts, 65 times. J.A. 471-96; App. 108a (some of the precincts suffering more than a single split; thus requiring that they become three or more new precincts). Of these, 17 precincts would have had less than 20 people in them. J.A. 471-96.

On September 3, 1992, the Board responded to NAACP concerns by granting its request that a black person, Jerome Blunt, be appointed to the vacant seat on the Board. This reflects "the Board's demonstrable willingness to ensure black representation on the Board. . . . " App. 112a (emphasis in original). At the same September 1992 meeting, the Board also passed a motion of intention to adopt the Police Jury's redistricting plan. The jury plan offered "the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need [to be] redraw[n])." App. 106a. By maintaining the integrity of the Police Jury's precincts, the Board not only complied with Louisiana law, but also avoided the costs and disruptions that would have accompanied the NAACP plan. Furthermore, the Board understandably assumed that the Department of Justice would automatically preclear a plan that was identical to one the Department found to be entirely free of any discriminatory purpose or effect just one year before. With two districts well over 40% black, the plan also offered the substantial promise that black voters would be able to elect a candidate of their choice.

has no reference to the *objective* feasibility of creating a "reasonably compact" majority-black district in Bossier City. Furthermore, the parties introduced substantial evidence, including a federal court finding, demonstrating it was not feasible to create a "reasonably compact" majority-black district in Bossier City, which is why it has never been drawn. *See*, e.g., J.A. 471-96; J.A. 48-49, 51-52. Thus, any contrary stipulation should be disregarded. *PPX Enter.*, *Inc. v. Audiofidelity*, *Inc.*, 746 F.2d 120, 123 (2d Cir. 1984); *Coastal States Mktg.*, *Inc. v. Hunt*, 694 F.2d 1358, 1369 (5th Cir. 1983).

On January 4, 1993, the Board submitted its plan to the Department of Justice for preclearance. Despite the identity between the Police Jury and Board plans, the Department denied preclearance citing "new information, particularly the 1991 [P]olice [J]ury elections held under the 1991 redistricting plan and the 1992 redistricting process for the [S]chool [B]oard." App. 235a. Yet, the only noteworthy event of the 1991 Police Jury elections was that Jerome Darby was once again re-elected, this time without opposition, to represent a majority-white district.

Two elections have been held under the redistricting plan adopted by the Board. In 1994, two black candidates were elected to the Board. Julian Darby was elected from district 10, which is only 26.7% black. J.A. 508. Vassie Richardson, who is also black, was elected from district 4, which is 45% black. J.A. 508. In the interim period between elections, the Board appointed Kenneth Wiggins, an African-American, to fill a vacancy in district 8 on the Board. In the 1998 elections, Mr. Wiggins was re-elected over a white opponent in a district that is only 21.1% black. J.A. 508; Official Elections Results attached to Motion to Dismiss or Affirm at A4. Also, both Julian Darby and Vassie Richardson were again elected, this time without opposition. *Id.* at A8.4 As a result of these

<sup>4</sup> It is well established that a court may take judicial notice of any fact that is not subject to reasonable dispute and is capable of accurate and ready determination. See, e.g., Fed. R. Evid. 201; De Castro v. Board of Comm'rs, 322 U.S. 451, 463 (1944) (appellate court had "properly take[n] judicial notice" of election results); Brown v. Piper, 91 U.S. 37, 42 (1875) ("In this country, such [judicial] notice is taken of . . . the election and resignations of senators. . . ."). Accordingly, courts routinely take judicial notice of post-trial elections and changes in representation in voting rights and other cases. See, e.g., Winpisinger v. Watson, 628 F.2d 133, 138 n.28 (D.C. Cir.), cert. denied, 446 U.S. 929 (1980); Zaldivar v. City of Los Angeles, 780 F.2d 823, 827 & n.3 (9th Cir. 1986); Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281, 1288 n.13 (11th Cir. 1995), cert. denied, 516 U.S. 1045 (1996); Westwego Citizens for Better Gov't v. City of Westwego, 906 F.2d 1042, 1045 (5th Cir. 1990). Finally, appellee did not have an opportunity to present the 1998 election results to

elections in which three blacks have been elected to the Board, blacks now enjoy extra-proportional representation of 25% (3/12) on the Board in a parish with only 20.1% black population and 17.6% black voting age population. App. 79a. The election of three black members thus completely refutes appellants' repeated claim that the clearly "foreseeable effect" of the plan was to prevent any black candidates from being elected and that the white population will not vote for black candidates in Bossier Parish. See, e.g., U.S. Br. 17; A-I Br. 28.5

The Board subsequently sought a declaratory judgment from the three-judge District of Columbia court preclearing its proposed redistricting plan. The district court has now concluded on two separate occasions that the plan is free of discriminatory purpose or effect. See Reno v. Bossier Parish School Board, App. 29a-77a ("Bossier I").

the district court as the election was held after the district court entered its decision on remand.

Bossier Parish elections. Specifically, the Justice Department's expert was concededly unable to find any racial bloc voting in any election for any Bossier Parish office, pursuant to either the "extreme case analysis [or] bivariate ecological regression analysis" endorsed by the Gingles plurality opinion. Thornburg v. Gingles, 478 U.S. 30, 52-53 (1986); J.A. 167-74. The only election where racial bloc voting was found was one "exogenous" state judicial race (held not just in Bossier Parish), which obviously reflects different voting patterns than those for local representative office. J.A. 165-67. See, e.g., Magnolia Bar Ass'n v. Lee, 994 F.2d 1143, 1149 (5th Cir.), cert. denied, 510 U.S. 994 (1993). Even in this single race, the "racial polarization" led to the black candidate receiving 35.7% of the vote in a parish with a 17.6% black voting age population. J.A. 518.

<sup>&</sup>lt;sup>6</sup> The district court faithfully applied the Arlington Heights analysis in both its initial decision and on remand. See, e.g., App. 5a-6a, 102a-105a (evidence pertaining to dilutive impact of plan); App. 6a-7a, 112a (history of discrimination); App. 7a, 108a, 111a-112a (sequence of events leading up to decision); App. 7a, 85a (substantive departures from factors usually considered important); App. 7a-8a, 83a, 109a-111a (alleged contemporaneous statements by Board members).

#### SUMMARY OF ARGUMENT

This appeal is nonjusticiable because no legally cognizable interest can be harmed by a redistricting plan that will not be used again. Further, the district court did not decide that § 5 reaches only voting changes adopted for a retrogressive purpose. Indeed, the court below unequivocally declined to resolve this issue because it found that the facts demonstrating a "nonretrogressive, but nonetheless discriminatory, purpose . . . are not present here." App. 3a-4a (internal quotations omitted).

In any event, Section 5's plain language demonstrates that the purpose inquiry under that statute relates exclusively to retrogressive intent. Section 5 requires a covered jurisdiction to demonstrate that any voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . "Since a change has the "effect" of "denying or abridging the right to vote" only if it causes retrogression, it has the "purpose" of "abridging" only if it is intended to cause retrogression. No principle of statutory construction or common usage would suggest that a solitary phrase modifying two objects in the same sentence could have a different meaning as to each noun.

This does not mean, as appellants believe, that § 5 fails to proscribe a purpose to dilute minority voting strength, It simply means that dilution is measured by a different benchmark than in a constitutional challenge, i.e., the existing redistricting system rather than a hypothetical alternative plan. Thus, just as in Bossier I, appellants impermissibly attempt to "shift the focus of § 5 from nonretrogression to vote dilution, and to change the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." App. 37a-38a. The only difference here is that appellants seek to make the relevant § 5 question whether the purpose of a voting change is "vote dilution" relative to a "hypothetical, undiluted plan," rather than relative to the existing plan. Thus, in appellants' hands, § 5 is not a mechanism for protecting minority voters from stratagems designed to

weaken their electoral position, as Congress intended, but instead becomes a means for the Justice Department to impose its hypothetical minority "maximization" plan. Nor is there any basis for concluding that § 5 prohibits the "purpose" proscribed by the Constitution because there is no congruence between the Constitution and § 5, and because, even if the statute prohibits only retrogressive vote dilution, it still goes farther than the Fifteenth Amendment that it was intended to enforce.

Finally, there is also no basis for denying preclearance in a § 5 proceeding to a voting change that satisfies the non-retrogression purpose standard of Section 5 on the grounds that it violates the Constitution. The dicta in Beer v. United States, 425 U.S. 130 (1976), particularly as subsequently construed, only confirms the obvious point that a reapportion-ment plan which satisfies § 5 may be enjoined in a subsequent constitutional challenge. This result is also the only one consistent with the express language of § 5. Alternatively, even if constitutional questions are within the province of § 5 courts, it is clear and conceded that the United States bears the burden of proving a constitutional violation.

#### ARGUMENT

### I. THIS APPEAL IS NONJUSTICIABLE.

Appellants seek to have this Court opine on the legal validity of a redistricting plan that will never again be used in any election. Article III prevents such an advisory opinion as appellants lack standing and the case is now moot. It has long been recognized that the "case-or-controversy requirement [of Article III] subsists through all stages of federal judicial proceedings, trial and appellate." Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990). Accordingly, "[t]he standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997). Likewise, "Article III of the Constitution requires that there be a live case or controversy at the time that a federal court decides the case; it is not enough that

there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing." Burke v. Barnes, 479 U.S. 361, 363 (1987). Therefore, Article III requires a case to be dismissed as moot "if an event occurs [pending review] that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." Church of Scientology v. United States, 506 U.S. 9, 12 (1992) (quoting Mills v. Green, 159 U.S. 651, 653 (1895)).

There is no case or controversy here because, regardless of whether the Court affirms or remands the lower court's declaratory judgment preclearing the Board's 1992 redistricting plan, that plan will not be used again. One month after appellants filed their jurisdictional statements in this Court, the last scheduled election ever to be held under the Board's plan was conducted, and three black candidates were elected. The Board's plan will not be utilized again because, under Louisiana law, the next Board election will not take place until 2002. J.A. 373 (La. Rev. Stat. § 17:52). By that time, new federal decennial census data will be available, and thus the Board will be required under state law and this Court's one-person one-vote precedents to adopt a new apportionment plan. J.A. 406 (La. Rev. Stat. § 17:71.5). Accordingly, the current plan is already a dead letter, and if there is a remand, the Board will move to dismiss its complaint. In the terms of § 5, the voting "practice" at issue here will never again be "enforced" by any official in Bossier Parish. 42 U.S.C. § 1973c. See Watkins v. Mabus, 502 U.S. 954, 954-55 (1991); Hall v. Beals, 396 U.S. 45 (1969). Accordingly, as the parties "invoking federal jurisdiction," appellants have failed to carry their burden of establishing that they have a "legally protected interest." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). It is clear that appellants will not suffer "actual or imminent" injury under a plan that will never again be utilized, and thus they have no standing to invoke this Court's jurisdiction. Id. at 560 (internal quotations omitted).7

<sup>7</sup> For the same reason, this case is now moot and there is no relief that the Court can grant which will redress appellants' purported injuries. See,

Consequently, just as it is now too late for appellants to challenge the Board's redistricting plan under § 2 in district court, it is too late for them to bring their appeal.

Appellants speculate that a Board member might die or resign in the next two and a half years, necessitating the use of the challenged plan to fill that vacancy. Appellants have offered no evidence that a vacancy on the Board is "certainly impending" or even likely. Lujan, 504 U.S. at 564 n.2 (internal quotations omitted). When a case involves uncertain or "contingent future events that may not occur as anticipated, or indeed may not occur at all," Article III's imminence requirement is not satisfied. Lewis, 494 U.S. at 480 (internal quotat ons omitted). Likewise, appellants' suggestion that the Board will violate its state law duty to engage in timely redistricting after the 2000 census is "unadorned speculation." Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 44 (1976). In any event, they are flatly wrong in suggesting that, if no new redistricting plan is developed, then the grossly malapportioned 1990s plan could, much less will, be used for the 2002 elections. U.S. Opp. 1; J.A. 406.

Unable to identify any legally cognizable interest in this "case or controversy," appellants claim that Article III is satisfied because a different court in a different case "might" grant different relief they might be "interested" in, i.e., invalidating the 1998 elections and holding new elections under some unidentified "valid plan." U.S. Opp. 2; A-I Opp. 3. Appellants hypothesize a future lawsuit in a local Section 5 court which would somehow invalidate the 1998 elections. Although it is true that a local district court, as a corollary power, may sometimes order new elections where the voting procedure used in that election had not been precleared, see, e.g., Berry v. Doles, 438 U.S. 190, 192 (1978), it plainly has no power or jurisdiction to invalidate election results where,

e.g., Burke, 479 U.S. at 363; Oil, Chem. and Atomic Workers v. Missouri, 361 U.S. 363, 371 (1960); Northeastern Fla. Chapter of Associated Gen. Contractors v. Jacksonville, 508 U.S. 656, 669-70 (1993) (O'Connor, J., dissenting).

as here, the new plan had been duly precleared. If appellants are suggesting that the local district court could invalidate elections held under an erroneously precleared plan, that is impossible as it would require the local district court to decide whether the plan was correctly or erroneously precleared, which it plainly may not do.8

Appellants finally argue that the 1990s redistricting plan somehow injures them because, absent reversal, it will serve as the retrogression "benchmark" for the 2000 redistricting plan. But appellants cannot rationally explain why this matters to them because, if the 1990s plan is somehow eliminated, then the 1980s plan will be the benchmark. Abrams v. Johnson, 521 U.S. 74, 95-97 (1997). All agree that there is no difference between the 1980s and 1990s Board plan since they contain materially the same racial percentages and neither has a black majority district; so appellants have no cognizable interest in substituting one retrogression benchmark for an identical one. App. 88a. In any event, the only legally cognizable interest appellants have in the 1990s plan is whether it injures any group's "right to vote." 42 U.S.C. § 1973c. Since the 1990s redistricting plan does not potentially injure that interest, the Court cannot engage in hypothetical adjudication of a non-controversy because the collateral consequences of that decision are of hypothetical interest in a future proceeding. 10 Spencer v. Kemna, 118 S. Ct. 978, 984-87 (1998).

<sup>&</sup>lt;sup>8</sup> This Court has repeatedly emphasized that local Section 5 district courts are "strictly limited" to addressing "[t]he only issue" over which they have jurisdiction, i.e., "whether a particular state enactment is subject to the provisions of the Voting Rights Act, and therefore must be submitted for approval before enforcement." Allen v. State Bd. of Elections, 393 U.S. 544, 558-59 (1969); accord Lopez v. Monterey County, 519 U.S. 9, 21 (1996); Perkins v. Matthews, 400 U.S. 379, 383 (1971).

<sup>9</sup> There will be no new plan to serve as a benchmark because, as noted, neither the court below nor the local "Allen" court could order new elections or a new plan.

<sup>10</sup> If mootness is found, vacatur under United States v. Munsingwear, Inc., 340 U.S. 36 (1950), is not appropriate in this unique context.

# II. THE DISTRICT COURT DID NOT RULE THAT SECTION 5 REACHES ONLY RETROGRESSIVE INTENT.

In its first Bossier opinion, this Court expressly left "open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." App. 45a. As appellants sometimes admit, the district court expressly "declined" to resolve this legal question. U.S. J.S. 12 (emphasis added). It did so because it was unnecessary to its decision since it had made the factual finding that there was no evidence "that the Board enacted the [redistricting] plan with some non-retrogressive, but nevertheless discriminatory, "purpose." "App. 3a n.2 (quoting Bossier I, App. 46a).

First, the lower court established that it was fully aware that the Court had "le[ft] for another day the question" whether § 5 prohibits actions taken with non-retrogressive

Munsingwear provides that, in certain circumstances, the judgment in a moot case should be vacated when this "extraordinary remedy" is necessary to relieve the parties of the collateral consequences of the judgment below and the losing party was unable to obtain appellate review. U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 26 (1994). Because no collateral consequences will flow from the decision of the lower court, the basic rationale of the Munsingwear doctrine has no application here. In addition to the fact that the 1990s plan will never again be used, the lower court's judgment will have no preclusive effect in future cases. Collateral estoppel cannot be offensively employed against the United States, and the decision of the district court in this case is not binding precedent for other courts. United States v. Mendoza, 464 U.S. 154, 160-61 (1984); In re Korean Air Lines Disaster, 829 F.2d 1171, 1176 (D.C. Cir. 1987), aff'd sub nom. Chan v. Korean Air Lines, Ltd., 490 U.S. 122 (1989). Furthermore, appellants could have preserved the justiciability of the case by seeking a stay pending appeal, but failed to do so. Cf. Lopez v. Monterey County, 516 U.S. 1104 (1996). It is their "burden, as the party seeking relief . . . to demonstrate not merely equivalent responsibility for the mootness, but equitable entitlement to the extraordinary remedy of vacatur." U.S. Bancorp, 513 U.S. at 26. It is appellants' own fault that they are unable to obtain appellate review because they slept on their rights. Id. at 24-26.

discriminatory intent. App. 3a. It then "decline[d]" to "answer the question the Court left for another day" because "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." App. 3a (emphasis added). While the court stated that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose[,]' " it found that "those imagined facts are not present here." App. 3a-4a (emphasis added).

Thus, the district court plainly stated that resolution of the question whether § 5 prohibits a discriminatory, but non-retrogressive, purpose was unnecessary to decide this case because the facts supporting any such a discriminatory purpose were "not present here." It did not hold, as appellants maintain, that if such discriminatory purpose were "present here," the Board would nonetheless be entitled to preclearance under § 5 because that statute proscribes only "retrogressive" intent.

The rest of the court's analysis further confirms that it was analyzing the question of "non-retrogressive, but nevertheless discriminatory, 'purpose.' " First, the court plainly stated that, as it had already ruled in Bossier I, the Board had the "difficult[] . . . burden to prove the absence of discriminatory intent." App. 5a (first emphasis in original, second emphasis added). Next, the court analyzed the Board's reasons for adopting the Police Jury plan in preference to the NAACP Plan, not whether the Board had adopted the Police Jury plan for the purpose of putting minorities in a worse position than they enjoyed under the Board's 1980s redistricting plan. Thus, it squarely held that "the Board's resort to the pre-cleared Jury plan (which it mistakenly thought would easily be pre-cleared) and its focus on the fact that the Jury plan would not require precinct splitting, while the NAACP plan would, were 'legitimate, nondiscriminatory, motives.' " App. 5a. Again, then, the court was holding that the Board's "motives" for adopting the Jury plan in preference to the NAACP plan were "legitimate [and] non-discriminatory" because the Police Jury plan better furthered the race-neutral

policy of preserving precincts than the NAACP plan. Comparing the relative virtues of the Police Jury plan and the maximizing alternative proposed by the NAACP makes no sense if the court were analyzing only whether the Board's purpose was to cause retrogression compared to the existing plan. See supra pp. 7-8. Rather, this is classic "discriminatory purpose" analysis used in all Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977), and employment cases – i.e., whether the minority applicant (or integrative alternative) was rejected for racial reasons or for "legitimate, non-discriminatory reasons." Furnco Constr. Corp. v. Waters, 438 U.S. 567, 576 n.8 (1978).

Similarly, when the court analyzed the impact of the proposed plan under Arlington Heights and this Court's remand, the district court did not look only at "whether the Jury plan bears more heavily on blacks than the pre-existing plan." App. 5a. Rather, after disposing of private appellants' argument that the Jury plan had such a retrogressive effect, the court analyzed the other "allegedly dilutive impacts of the Jury plan" that appellant had offered "in support of its discriminatory intent argument." App. 6a (emphasis added). Of course, as the district court was well aware, this Court in Bossier I had used the term "dilutive impact[]" to denote a situation where a jurisdiction chooses a plan that "dilut[es]" black votes as compared to a "reasonable alternative voting . . . benchmark" and in contradistinction to a plan which had a "retrogressive 'effect.' " App. 37a. See also App. 10a-11a (Silberman, J., concurring). Thus, as instructed by this Court on remand, the district court was analyzing whether the choice of the allegedly "dilutive" alternative reflected a "discriminatory intent."

In this regard, the court found that the Board's plan could have reflected an impermissible purpose if it had "deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote" by, for example, "fail[ing] to respect communities of interest and cutting across attendance boundaries." App. 6a. In this case, however, it found "an absence of such evidence in this record" and thus the discriminatory purpose assertion

to be "too theoretical, and too attenuated, to be probative." App. 6a. Examining such evidence of "fragmentation" is standard analysis in determining whether a jurisdiction was acting with discriminatory purpose. See Johnson v. De Grandy, 512 U.S. 997, 1015 (1994). Finally, the district court's opinion clearly stated that it was adhering to the same "method of analysis" as its "earlier" decision. App. 5a. The earlier decision plainly focused exclusively on whether the NAACP plan was rejected for impermissible racial reasons, but did not focus on retrogressive intent. App. 105a-114a.11

To be sure, the majority opinion adverts on several occasions to the Board's "retrogressive intent." App. 6a-7a. In context, however, this should not be read as indicating that the district court somehow had made sub silentio the legal determination that only retrogressive intent violates the purpose prong of § 5. Rather, these statements must be read in conjunction with the district court's threshold decision that there was no evidence of "non-retrogressive, but nonetheless discriminatory, purpose," App. 3a, and its incorporation of its prior findings that the Board's "change was undertaken without a discriminatory purpose." App. 105a. Given the absence of such discriminatory purpose evidence, the court below quite naturally sometimes phrased its conclusions in terms of retrogressive intent. Since, in this opinion, the court had

was again analyzing whether "the Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts.' "App. 9a (quoting App. 113a.). It noted that the court had both considered "dilutive impact" and applied the Arlington Heights framework in its first opinion — contrary to appellants' representation to this Court in the first Bossier appeal. App. 10a. The concurrence then affirmatively stated that it was engaging in such analysis again, while adding only that it was "now" dealing expressly with the Board's compliance with the outstanding school desegregation decree. App. 11a. Thus, the concurrence further confirms that the district court's opinion was simply fleshing out its first discriminatory purpose analysis, and was not substituting some new legal standard that focused exclusively on retrogressive intent.

already found that rejection of the NAACP plan was done pursuant to "legitimate, non-discriminatory motives," it did not need to reiterate that finding when it was dealing with each of the separate pieces of the Arlington Heights evidence. This is particularly true since, when considering each of the Arlington Heights factors, it incorporated by reference the court's earlier decision – in which it plainly did find that the plan was not motivated by discriminatory intent. See App. 6a-7a. Finally, as noted, the court often stated its conclusions in terms of "discriminatory" purpose, not "retrogressive" purpose. App. 5a; App. 6a (appellants had failed "to rebut the non-discriminatory reasons advanced by the Board" for adopting its plan). 12

In short, even if the court had not expressly refused to resolve the legal question of § 5's scope, it is quite implausible that it would have resolved the legal issue that this Court made clear was important and unsettled without discussing in any way the reasons for adopting this position. In any event, if the district court did conclude that § 5 reaches only retrogressive intent, this is a correct interpretation of that statute.

## III. SECTION 5 REACHES ONLY RETROGRESSIVE INTENT.

As in Bossier I, appellants advance an interpretation of § 5 that studiously and necessarily avoids the statute's plain language and this Court's consistent interpretation of that language, as well as the statute's unique structure and inherently "limited substantive goal." Bush, 517 U.S. at 982.

First, appellants' contention that § 5 prohibits a nonretrogressive purpose is irreconcilable with the statute's plain language. Section 5 provides in pertinent part that a covered jurisdiction is entitled to a declaratory judgment preclearing a proposed voting change where the practice at issue "does not

Similarly, while the court did say that the Board's action reflected a "determination to maintain the status quo," it is unclear whether the status quo referred to was the previously enacted Police Jury plan or the Board's own 1980s redistricting plan. App. 7a.

have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . " 42 U.S.C. § 1973c. Under the statute, then, preclearance will be denied if a proposed change has either (1) the "purpose . . . of denying or abridging the right to vote on account of race or color" or (2) "the effect of denying or abridging the right to vote on account of race or color." It is firmly established and undisputed that a proposed change has the "effect of denying or abridging the right to vote" only if it has retrogressive effect on minority voters. \(^{13}\) Thus, a jurisdiction has the "purpose . . . of denying or abridging the right to vote" only if its purpose is to retrogress.

A contrary conclusion can only be reached if one assumes that the phrase "denying or abridging the right to vote on account of race or color" has a different meaning as it relates to "purpose" and "effect." Such an interpretation would be absurd, as no principle of common usage, grammar, or logic would suggest a solitary phrase modifying two objects in the same sentence could have a different meaning as to each noun. Not surprisingly, appellants have not cited a single case where this Court has endorsed such a counterintuitive and anomalous method of construing a statute. If the phrase "abridging or denying the right to vote" refers to retrogression as it relates to the term "effect," it inexorably follows that it must have the same meaning as applies to the term "purpose." 14

<sup>13</sup> See, e.g., Bossier I, App. 46a ("[W]e have adhered to the view that the only 'effect' that violates § 5 is a retrogressive one."); Beer, 425 U.S. at 141; City of Lockhart v. United States, 460 U.S. 125, 134 (1983); Shaw v. Reno, 509 U.S. 630, 654 (1993) ("Shaw I"); Holder v. Hall, 512 U.S. 874, 883 (1994); Miller v. Johnson, 515 U.S. 900, 926 (1995) (" '[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities. . . . ' ") (quoting Beer, 425 U.S. at 141); Bush, 517 U.S. at 982-83; Abrams, 521 U.S. at 97.

<sup>&</sup>lt;sup>14</sup> See, e.g., BankAmerica Corp. v. United States, 462 U.S. 122, 129 (1983) ("[W]e reject as unreasonable the contention that Congress intended the phrase 'other than' to mean one thing when applied to 'banks' and

Appellants simply ignore this dispositive point and make no attempt to explain how "denying or abridging" could possibly dramatically shift meanings within the same sentence. In light of this implicit concession that there is no rational construction of § 5's actual language which reaches a purpose other than retrogression (at least absent reversal of the Court's precedent on retrogressive effect - which no one seeks), the Court's inquiry on this issue is complete. For, "[w]hen the words of a statute are unambiguous, then this first canon is also the last: 'judicial inquiry is complete.' " Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 254 (1992) (quoting Reuben v. United States, 449 U.S. 424, 430 (1981)). See also Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997) ("Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.") (internal quotations omitted).15

Thus, appellants are reduced to arguing that, in contexts other than Section 5, § 5's language could encompass a discriminatory, albeit nonretrogressive, purpose. Specifically, appellants' central theme is that under the Constitution and § 2, a jurisdiction may dilute minority voting strength without putting minorities in a worse position than they previously enjoyed and thus a jurisdiction may have a purpose to dilute minority voting strength without intending to place minorities in a worse position. U.S. Br. 22-23; A-I Br. 26. Therefore, the

another thing as applied to 'common carriers,' where the phrase 'other than' modifies both words in the same clause."); Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980).

this reason, we nevertheless note that there is nothing in that history suggesting the absurd English usage appellants desire. So far as we can discern or appellants argue, nothing in the 1982 legislative history suggests that the phrase, "denying or abridging" changes meaning when that phrase modifies "purpose" or otherwise indicates that there was some fundamental disconnect between "purpose" and "effect" in § 5. To the contrary, the legislative history treats purpose and effect interchangeably, in the sense that it uses the same adjective to describe their scope. See, e.g., S. Rep. No. 417, 97th Cong., 2d Sess. 18 (1982).

argument goes, a jurisdiction may have the "purpose . . . of abridging the right to vote" under § 5 even if there is no intent to increase discrimination against minorities.

Even if this assertion were not contrary to the plain language of § 5, the attempt to analogize vote dilution under the Constitution to § 5 dilution ignores the fact that, as the Court has often noted, dilution is necessarily a relative concept. 16 Accordingly, the dilution concepts developed in the context of constitutional and § 2 lawsuits to beneficially alter existing electoral practices cannot be transferred to the inherently different context of § 5, which is intended to "freez[e] election procedures" against harmful changes to that system. Miller v. Johnson, 515 U.S. 900, 926 (1995) (internal quotations omitted). In the context of § 2 or constitutional challenges to alter existing systems, dilution necessarily requires a plaintiff to "postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice." Bossier I, App. 37a. See also Holder v. Hall, 512 U.S. 874, 881 (1994) (plurality); id. at 950-51 (Blackmun, J., dissenting). The argument is that the plan dilutes minority voting strength compared to the hypothesized alternative: a singlemember districting plan compared to an at-large scheme or a potential single-member redistricting plan compared to the one adopted. See Holder, 512 U.S. at 880; Thornburg v. Gingles, 478 U.S. 30, 88 (1986); Rogers v. Lodge, 458 U.S. 613, 616 (1982). If the existing plan was deliberately conceived or maintained in order to achieve that dilutive result, it is unconstitutional, but may violate § 2 even if that dilutive harm is unintended. City of Mobile v. Bolden, 446 U.S. 55, 62-63 (1980); Gingles, 478 U.S. at 44.

The benchmark for measuring whether a minority group's voting strength is relatively diluted under § 5 is entirely

<sup>16</sup> See, e.g., Bossier I, App. 37a. ("[T]he very concept of vote dilution implies – and, indeed, necessitates – the existence of an 'undiluted' practice against which the fact of dilution may be measured."); Holder, 512 U.S. at 880 (" 'The phrase vote dilution itself suggests a norm with respect to which the fact of dilution may be ascertained.' ") (quoting Gingles, 478 U.S. at 88) (O'Connor, J., concurring in judgment).

different, and necessarily so. Dilutive effect is not assessed by a comparison of the proposed change to a hypothetical "reasonable alternative," but by a comparison to the existing system now being changed in the manner that triggers § 5. Because § 5 deals-only with changes to parts of an existing voting system, it is inherently not a weapon that can be used effectively to alter or improve an unchanged status quo. Deliberate maintenance of an at-large system for purely discriminatory reasons does not offend § 5 and cannot be remedied by that statute. Beer, 425 U.S. at 128. Moreover, the only § 5 remedy is to deny the proposed change and thus restore the status quo ante. Thus, § 5 is a purely reactive statute that is designed to "freez[e] election procedures" against erosion; improvements to the discriminatory status quo must occur through § 2 or constitutional challenges to that system. "Because § 5 focuses on 'free[zing] election procedures,' a plan has an impermissible 'effect' under § 5 only if it 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Bossier I, App. 35a (quoting Beer, 425 U.S. at 141). Thus, a nonretrogressive change "can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5." Beer, 425 U.S. at 141 (emphasis added). Rather, a voting change "deni[es] or abridg[es] the right to vote" under § 5 only if it dilutes minorities' group voting strength compared to their " 'theretofore enjoyed voting rights." City of Richmond v. United States, 422 U.S. 358, 378 (1975) (quoting Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960)). This is an entirely different dilution inquiry than that required under § 2, even though the statutory language of the two sections is virtually identical. See 42 U.S.C. § 1973(a) (no voting procedure may "result in a denial or abridgement of the right . . . to vote on account of race or color. . . . "); see 128 Cong. Rec. 14292 (daily ed. June 18, 1982) (remarks of Sen. Kennedy).

In short, because of the "different evils" at which they are addressed, in asking whether a redistricting or at-large system has actually abridged or diluted minority voting strength, one gives an entirely different answer under § 5 than

would be given in a case involving a constitutional or § 2 challenge to such a system. Bossier I, App. 33a. Just as the standard for whether abridgment or dilution exists is different under § 5 than under the Constitution or § 2, so too is the standard for determining whether a local government intended for that abridgement or dilution to exist. A jurisdiction obviously cannot possess a purpose of diluting minority voting strength, as that concept is understood under § 5, unless it intends to dilute minority voting strength as that concept is understood under § 5. This does not mean, as appellants believe, that § 5 fails to proscribe a purpose to dilute minority voting strength. It simply means that dilution is measured by a different benchmark, i.e., the existing system rather than any "reasonable alternative."

Appellants nevertheless assert that § 5 proscribes a purpose to deny or abridge the right to vote relative to another available alternative – such as the NAACP maximization plan here. While this is the test for abridgement and dilution under the Constitution and § 2, it is plainly not under § 5. Since the only harm proscribed by § 5 is less minority voting power than the status quo ante, a government cannot violate § 5 unless its purpose is to cause that harm. The fact that a jurisdiction's purpose is to cause the relative harm proscribed by the Constitution – less minority voting power than a reasonably available alternative – therefore affords no basis for finding a § 5 violation. Since § 5 is designed to insure against changes that make the status quo worse, the relevant question is not whether its purpose is to improve the status quo ante as much as a reasonably available alternative.

Thus, just as in Bossier I, appellants impermissibly attempt to "shift the focus of § 5 from nonretrogression to vote dilution, and to change the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." App. 37a-38a. The only difference here is that appellants seek to make the relevant § 5 question whether the purpose of a voting change is "vote dilution" relative to the "hypothetical, undiluted plan," rather than "nonretrogression." But since "purpose" and "effect" modify the same language in § 5, attempting to transfer the § 5 purpose inquiry to a different

benchmark is just as contrary to the plain language and overall structure of that statute.

In short, in light of both its structure and language, it is quite impossible to interpret § 5 to prohibit a nonretrogressive purpose so long as the statute does not prohibit a nonretrogressive effect. Recognizing this, although appellants cannot directly argue that stare decisis permits overruling Beer and its numerous progeny, they nevertheless advance arguments that are necessarily premised on the notion that § 5 prohibits discriminatory, albeit nonretrogressive, effects and that Beer was wrongly decided.

In their most obvious assault on Beer, appellants' principal submission is that § 5's central purpose is to prevent the implementation of any new voting practice that "perpetuates" or "maintains" an existing discriminatory system. U.S. Br. 22-24; A-I Br. 24. This assertion, of course, cannot be reconciled with the established principle that § 5 reaches only retrogressive effect and, indeed, precisely echoes the dissenting opinions' arguments in both Beer and Lockhart, the two cases initially establishing that principle. Beer, 425 U.S. at 151 (Marshall, J., dissenting); City of Lockhart v. United States, 460 U.S. 125, 145 (1983) (Marshall, J., concurring in part and dissenting in part). The Court in Lockhart expressly acknowledged that the new electoral system "may . . . remain[] discriminatory," but was "entitled to § 5 preclearance" because it "did not increase the degree of discrimination against blacks." Lockhart, 460 U.S. at 134 (emphasis added). Appellants are therefore flatly wrong in arguing that § 5's goal was to prevent new electoral systems from "remaining discriminatory," even if they did not "increase the degree of discrimination against [minorities]." More generally, since the voting procedures which § 5 intended to "freeze" were often intentionally discriminatory in 1965, § 5 necessarily contemplated and tolerated changes which perpetuated and froze that discriminatory status quo, until they were undone by § 2 and the Constitution. Bossier I, App. 34a; Miller, 515 U.S. at 926; Georgia v. United States, 411 U.S. 526, 538 (1973). It was for this reason that the Court rejected Justice Marshall's argument that maintenance of the status quo offended § 5 and held that § 5 reached only changes with a retrogressive effect.<sup>17</sup> See Lockhart, 460 U.S. at 145; Beer, 425 U.S. at 141.

The fact that construing § 5 to reach only a retrogressive purpose would also tolerate changes which maintain the status quo thus provides no basis for rejecting that construction of the statute. Since § 5 authorizes changes that actually maintain the status quo, the fact that a change was intended to

<sup>17</sup> Although stare decisis principles demand fidelity to Beer and Lockhart, we nonetheless note that those cases were entirely correct in concluding that § 5 did not in any way prohibit maintenance of the status quo. To the contrary, Congress explicitly authorized changes under which minority voting power was "'not affected.' " Beer, 425 U.S. at 141 (quoting H.R. Rep. No. 94-196, at 60). Similarly, Justice Brennan emphasized that the "fundamental objective of § 5 [is] . . . the protection of present levels of voting effectiveness for the black population." Richmond, 422 U.S. at 388 (Brennan, J., dissenting) (emphasis added). The very fact that § 5 applies only to changes to the status quo demonstrates that it could not have been intended to outlaw maintenance of the status quo. There is no better way to perpetuate a discriminatory system than not changing anything - a result necessarily contemplated by § 5. In Beer, for example, the submitting jurisdiction's attempt to maintain two at-large seats was not prohibited by § 5, even if this was deliberately done to "cancel out or minimize" minority voting strength compared to what they would enjoy under a single-member system. White v. Regester, 412 U.S. 755, 765 (1973). See Beer, 425 U.S. at 138-39. Finally, appellants note correctly that Congress in 1965 and 1982 was concerned with "'extraordinary stratagem[s]' " to discriminate against minorities beyond the discriminatory "tests and devices" outlawed by the "Act itself." U.S. Br. 23-24 (citing South Carolina v. Katzenbach, 383 U.S. 301, 335 (1966)). This self-evident point explains why § 5 presumptively suspends all voting procedures - in addition to the permanently suspended "tests and devices" outlawed "by the Act itself" - but it hardly says anything about the substantive standard that should be used to adjudicate whether those new voting practices violate § 5.

maintain the status quo cannot somehow suggest any illegality. 18

Since the United States cannot reconcile its nonretrogressive purpose argument with Beer's holding on retrogressive effect, it argues instead that Beer was not actually engaging in an act of statutory interpretation. Rather, the Beer Court made a policy decision about the desirability of prohibiting discriminatory "effects" and substituted its policy judgment for that of Congress. Specifically, the United States argues that Beer artificially circumscribed the plain language of § 5's "effect" because it was concerned that voting rights laws which prohibited a "discriminatory effect" alone were quite troublesome, and could lead to proportional representation. U.S. Br. 29-31. It invites the Court to make a different policy decision than the Beer Court because all agree that a racially discriminatory purpose is always bad. But, of course, this Court is not free to use different methods of statutory construction depending on how desirable it believes congressional policy decisions to be. The Court cannot interpret "abridge" to mean one thing when modified by "purpose" because that creates an uncontroversial policy result, but to mean another thing when modified by "effect" because that creates a policy that the Court believes is disquieting. Brogan v. United States, 118 S. Ct. 805, 811-12 (1998) ("Courts may not create their own limitations on legislation, no matter how alluring the policy arguments for doing so. . . . "). Rather, the Court must

<sup>§ 5</sup> reaches changes with a nonretrogressive purpose is a frontal assault on Beer and the consistent decisions following it. The United States asserts that a "purpose . . . of . . . abridging the right to vote on account of race" includes intentionally diluting minority voting power. U.S. Br. 18. But, under Beer, "abridg[e]" means retrogression or, stated another way, it means only a dilution of minority voting power as compared to the present system, but not dilution relative to a "hypothetical, undiluted alternative." Just as a nonretrogressive change cannot have the "effect of diluting or abridging the right to vote on account of race" unless it diminishes minorities' current voting power, it cannot have the purpose of doing so unless it intends to diminish that existing power.

interpret the law pursuant to its language and in a manner that renders the "statutory scheme . . . coherent and consistent." Robinson, 519 U.S. at 340. Nor, of course, is there any hint in Beer that the Court was in any way concerned with the policy implications of interpreting "effect" broadly, much less that the Court failed to faithfully interpret the congressional statute because of these concerns. 19 This is hardly surprising since the consequence of interpreting the § 5 "effect" prong "broadly" would have simply imposed on covered jurisdictions the "results test" of amended § 2. This is presumably not a policy which unduly troubled the Beer Court, since the same Court had decided White v. Regester, 412 U.S. 755 (1973), from which the § 2 "results" test was derived.

The United States' final argument is that § 5 tracks the language of the Fifteenth Amendment, which prohibits intentional discrimination, and, for this and other reasons, § 5 simply must go "as far as the Constitution." U.S. Br. 24 (quoting Bossier 1, App. 57a (Breyer, J., concurring))

<sup>19</sup> Footnote 8 in Beer, to which the United States refers, simply reaffirms that there is no constitutional right to proportional representation and then notes, with seeming approval, that the redistricting plan gave black voters roughly proportional representation when compared to the five single-member seats which were properly the subject of § 5 scrutiny. Beer, 425 U.S. at 151 n.8; U.S. Br. 30. Moreover, contrary to the United States' assertion, the Court has never said that § 5 "imposes substantial 'federalism costs' " because a nonretrogressive "effect" test would invalidate constitutional practices. Miller, 515 U.S. at 926; U.S. Br. 31. Rather, those costs are created by requiring sovereign "conquered jurisdictions" to come to Washington, D.C. to disprove their presumed guilt - costs which exist regardless of how "effect" is interpreted and which have been noted by the Court after § 5 was interpreted to reach only retrogressive effect. South Carolina v. Katzenbach, 383 U.S. 301, 359 (1966) (Black, J., dissenting); Miller, 515 U.S. at 926. If troubling federalism costs were imposed by effects tests that prohibited constitutional actions, both § 2 and Title VII of the 1964 Civil Rights Act would impose such costs, but the Court has never suggested that those statutes impose the sort of federalism problems created by § 5, even though the latter reaches only retrogressive effect. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

(emphasis in original). This assertion is flatly wrong on a number of levels.

First, § 5's use of language similar to the Fifteenth Amendment clearly is not intended to incorporate the Fifteenth Amendment standard, for discriminatory purpose or otherwise. As reflected in the fact that Section 2 also tracks the Fifteenth Amendment by prohibiting a "denial or abridgment of the right to vote on account of race," Congress did not intend by using that language to incorporate any sort of discriminatory purpose standard. Cf. U.S. Const., amend. XV. The legislative history goes out of its way to confirm this. "It is patently clearly [sic] that Congress has used the words 'on account of race or color' in the Act to mean 'with respect to' race or color, and not to connote any required purpose of racial discrimination." S. Rep. No. 417, 97th Cong., 2d Sess. 28 n.109 (1982) ("S. Rep.").

More to the point, in 1982, it seemed quite probable – if not definitively settled – that the Fifteenth Amendment did not reach any form of vote dilution, intentional or otherwise. Yet the 1982 Congress plainly did want to render dilution mechanisms – such as redistricting plans – subject to § 5 review. See U.S. Br. 23. The plurality in Mobile, which was the object of extraordinary focus by the 1982 Congress, seemingly held that the Fifteenth Amendment reached only abridgments of the "right to vote" – i.e., access to the ballot – rather than dilution of a group's voting power by redistricting schemes and the like. Thus, Congress could not have intended to incorporate the Fifteenth Amendment standard by using similar language, otherwise it would run the serious risk of limiting Section 5's coverage to the denial or abridgement of the right to cast a vote, rather than to dilution of group

<sup>&</sup>lt;sup>20</sup> See Mobile, 446 U.S. at 65 (plurality) ("Having found that Negroes in Mobile 'register and vote without hindrance,' " the Court concluded the Fifteenth Amendment had not been violated); see id. at 84 n.3 (Stevens, J., concurring in judgment); Rogers, 458 U.S. at 619 n.6 ("With respect to the Fifteenth Amendment, the [Mobile] plurality held that the Amendment prohibits only direct, purposefully discriminatory interference with the freedom of Negroes to vote.").

voting power. The Court has yet to resolve whether the Fifteenth Amendment does reach vote dilution. Voinovich v. Quilter, 507 U.S. 146, 159 (1993).

For the same reason, even if § 5 prohibits only a retrogressive purpose, it still goes "as far as" – indeed, beyond – the Fifteenth Amendment as currently understood. A redistricting plan which intentionally fragments black concentrations may not violate the Fifteenth Amendment (and the 1982 Congress had grave doubts that it could), while such a plan would violate § 5 if the fragmentation was designed to cause retrogression. Thus, whatever meaning is assigned to "purpose" under § 5, either one goes "as far as" – indeed, farther – than the Fifteenth Amendment, especially as understood by the 1982 Congress.

Moreover, while appellants assume that a prohibition of retrogressive purpose is necessarily a more "narrow" requirement than the discriminatory purpose prohibited by the Fifteenth Amendment, this is not so. For example, if, in 2001, a covered jurisdiction, for purely race-neutral reasons, decides to eliminate a black-majority district created in 1990 through a maximization plan, this would not violate either the Fifteenth or Fourteenth Amendments, but would constitute a proscribed retrogressive purpose under § 5. In short, while the standards are different, it is not possible to say that one is consistently "broader" than the other.

Consequently, even if there were some basis for concluding that § 5 must go as far as the Fifteenth Amendment, this is not an argument for interpreting it contrary to its plain language since if § 5 prohibits retrogressive purpose, it still goes farther than the Amendment it seeks to enforce. More generally, however, there is no basis for concluding that the Constitution – the Fourteenth or Fifteenth Amendment – is somehow silently incorporated into § 5 because there is very little congruence between the Constitution and § 5. Section 5 goes farther than the Constitution because it prohibits state laws solely on the basis of their effect, while the Constitution requires an invidious purpose. Section 5 also goes farther because it enjoins the operation of state law until the jurisdiction proves its innocence. On the other hand, § 5 goes less far

than the Constitution because it reaches only changes to voting systems and covers only certain jurisdictions. Since § 5 is both broader and narrower than the Constitution, there is no basis for assuming it was intended to be coextensive with the Constitution and nothing in the 1982 legislative history indicates any such intent to incorporate the Constitution's "purpose" standard into § 5.21

1. Appellants' assertion that the Court has previously resolved the question of whether § 5 reaches beyond retrogressive intent is obviously belied by the fact that the Bossier I Court expressly reserved this unsettled question. App. 45a-46a. Nor did either of the concurring opinions maintain that the Court's precedent required such a rule. App. 61a, 70a, 76a. Although appellants maintain that City of Pleasant Grove v. United States, 479 U.S. 462 (1987), somehow resolved this question, the Court's opinion never mentions the word "retrogression" or hints that there is any distinction between retrogressive and discriminatory purpose because that case simply did not present this issue. The question in Pleasant Grove,

<sup>21</sup> It is well established that § 5, as originally enacted in 1965 and subsequently amended in 1982, enforces the Fifteenth Amendment. See, e.g., Lopez v. Monterey County, 119 S. Ct. 693, 697 (1999); Lockhart, 460 U.S. at 136-37 (Marshall, J., dissenting); Allen, 393 U.S. at 588-89 (Harlan, J., concurring in part and dissenting in part); South Carolina, 383 U.S. at 335. Contrary to the United States' assertion, nothing in the legislative history indicates that § 5 reaches "racially motivated voting changes" that violate the Constitution. U.S. Br. 23 n.8. The legislative history upon which they rely merely contains a congressional finding at the extraordinary preclearance procedures of § 5 remain necessary to " 'preserve the "limited and fragile" achievements of the Act and to promote further amelioration of voting discrimination.' " S. Rep., at 10 n.19 (quoting City of Rome v. United States, 446 U.S. 156, 172, 182 (1980) (noting that "Congress passed the Act under the authority accorded it by the Fifteenth Amendment.")). The fact that Congress was relying on its power under the Fifteenth (or Fourteenth) Amendment to impose the extraordinary procedural burdens of § 5 does not suggest that § 5's substantive standard is coextensive with the Constitution, any more than § 2 incorporates the Fourteenth Amendment's standards.

§ 5 reaches only current purposes and effects or also includes future purposes and effects.<sup>22</sup> The answer to that question is in no way dependent upon whether § 5 prohibits a retrogressive purpose (or effect), or something more. Appellants apparently believe that any intent to do a future harm somehow cannot be a purpose to cause retrogressive harm. This is plainly untrue. As the Court explained, just as an annexation of land currently populated by whites alone could make minority voters worse off than they were prior to the annexation (i.e., retrogression), so too could annexing land that it was anticipated would be populated by whites. Pleasant Grove, 479 U.S. at 467.

Indeed, the Court's reasoning was that since "Section 5 looks not only to the present effects of changes, but to their future effects as well. . . . Likewise, an impermissible purpose under Section 5 may relate to anticipated as well as present circumstances." Id. at 471 (emphasis added). Thus, because the § 5 effects prong prohibits a certain (future) harm, it follows that the purpose prong encompasses an intent to do that (future) harm. Here, by the same logic, since the effect prong permits a nonretrogressive "harm," the purpose prong does not encompass an intent to do that harm.

In any event, the district court's opinion faithfully tracked Pleasant Grove's distinction between future and

While it is true that the dissenting opinion, in passing, mentions that Lockhart required a showing of retrogressive intent, the dissent's repeated central complaint was that "discriminatory purpose within § 5 must relate to voting" and that "[w]here an annexation's effect on voting rights is purely hypothetical, an inference that the city acted with a motivation related to voting rights is insupportable." Pleasant Grove, 479 U.S. at 474, 476-77 (Powell, J., dissenting). The majority did not mention or disagree with the dissenting opinion's legal conclusion that § 5 reached only retrogressive intent, any more than it "rejected" the dissent's view that § 5 related only to voting discrimination or retrogressive effect. It simply disagreed that a future purpose or effect was inherently "hypothetical" or irrelevant to voting and thus beyond the scope of § 5.

present harm. Thus, the lower court found that § 5's purpose prong would have been violated if there had been any "corroborating evidence that the Board had deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote." App. 6a (emphasis added). This almost precisely echoes Pleasant Grove's holding that the city had an "impermissible purpose of minimizing future black voting strength." Pleasant Grove, 479 U.S. at 471. Thus, whatever the rationale of Pleasant Grove, it is in no way inconsistent with the court below's reasoning or result.<sup>23</sup>

Likewise, the Court's decision in City of Richmond lends no support to appellants' interpretation of § 5. There, the Court upheld an annexation that severely "reduc[ed] the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation" notwithstanding this undisputed retrogressive effect. 422 U.S. at 378.

<sup>&</sup>lt;sup>23</sup> The Court's summary affirmance in Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983), is also no help to appellants. That decision is entirely consistent with the opinion below since the primary flaw in Busbee was that the submitting jurisdiction had "split a cohesive black community in Districts 4 and 5," thus causing minor retrogression in District 4, albeit not in District 5. Id. at 498-99. Since a summary affirmance is precedent only for any ground upon which the case below can be decided, and one potential ground was that the redistricting plan had a retrogressive effect, Busbee is not precedent for the position that a nonretrogressive plan violates § 5 if it is motivated by an illicit, nonretrogressive purpose. See, e.g., Mandel v. Bradley, 432 U.S. 173, 176 (1977). Moreover, the court below considered and rejected the notion that the Board had split or "fragmented" any cohesive black community as in Busbee. App. 6a. In Miller v. Johnson, 515 U.S. 900 (1995), the Court overturned the Justice Department's finding of discriminatory purpose as inconsistent with any understanding of that term and thus, as in Bossier I, resolution of the sort of purpose proscribed by § 5 was "not necessary [to the Court's] decision." App. 45a (internal quotations omitted). The Miller Court's implicit assumption that § 5 reaches beyond retrogressive purpose is no more dispositive of this point than Bossier I's explicit assumption that it does not.

The Court then remanded the case to insure that the motivation behind the annexation was not to cause such obvious retrogression in black voting strength, but was done for "verifiable, legitimate reasons." Id. at 375 (internal quotations omitted). In doing so, the Court again equated "changes taken with the purpose of denving the vote on the grounds of race or color" with "despoil[ing] colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." Id. at 378-79 (quoting Gomillion, 364 U.S. at 347) (emphasis added). Thus, Richmond merely holds that an indisputably retrogressive change, which might otherwise survive § 5 review, will be struck down if the motive in undertaking the annexation was to cause such retrogression, rather than to accomplish some "legitimate" goal. It in no way suggests that a nonretrogressive change may be invalidated if motivated by a nonretrogressive purpose. Beer itself expressly noted this obvious, dispositive difference:

The City of Richmond case thus decided when a change with an adverse impact on previous Negro voting power met the "effect" standard of § 5. The present case, by contrast, involves a change with no such adverse impact upon the former voting power of Negroes.

Beer, 425 U.S. at 139 n.11.

Thus, while Pleasant Grove and Richmond confirm that § 5 disjunctively prohibits either an unlawful purpose or unlawful effect, neither suggests that the § 5 "purpose" proscribes something other than the proscribed retrogressive "effect."

In sum, § 5 prohibits only changes with a retrogressive purpose.<sup>24</sup> There is also no basis, as we presently explain, for

No deference is due to the Attorney General's contrary interpretation because such deference is possible "only... if Congress has not expressed its intent with respect to the question, and then only if the administrative interpretation is reasonable." Bossier I, App. 42a (quoting Presley v. Etowah County Comm'n, 502 U.S. 491, 508 (1992)). Here, the

denying preclearance in a § 5 proceeding to changes that satisfy Section 5, on the grounds that they violate the Constitution.

statute's plain language directly resolves "the question" in a manner irreconcilable with the Attorney General's position, and the Court has declined to give deference in instances where the plain language was less definite than here. See, e.g., Presley, 502 U.S. at 508 (whether § 5 applies to changes in responsibilities of elected officials); Holder, 512 U.S. at 880 (plurality) (whether the phrase "standard, practice, or procedure" related to a change in the size of a governing authority). We further note that this Court has never adopted the Attorney General's reading of § 5 to override a contrary legal conclusion by the Section 5 district court - which is principally charged with administering the Act's preclearance mechanism and there is no basis for doing so. This Court has made clear that it will not defer to an agency interpretation where the agency is "neither the sole nor the primary source of authority in such matters." Litton Fin. Printing Div. v. NLRB, 501 U.S. 190, 202 (1991). Here, "the declaratory judgment proceeding is the basic mechanism for preclearance established by the Act, [while] the provision for submission to the Attorney General merely gives the covered State a rapid method of rendering a new state election law enforceable." McCain v. Lybrand, 465 U.S. 236, 247 (1984) (internal quotation and citation omitted); accord, e.g., Clark v. Roemer, 500 U.S. 646, 655 (1991); Morris v. Gressette, 432 U.S. 491, 503 (1977). Since Congress vested the three-judge court with primary responsibility for determining the meaning of "purpose and effect" under § 5, no intelligible principle of construction would reject the correct interpretation of that Article III court in deference to an erroneous, albeit "reasonable," construction by the Attorney General. See Crandon v. United States, 494 U.S. 152, 177 (1990) (Scalia, J., concurring in the judgment) (no deference for the Attorney General's interpretation of a criminal statute, because the statute "is not administered [by the Justice Department] but by the courts"). This Court does not give deference to the Attorney General's factual conclusions in a § 5 case, but defers to the three-judge court absent clear error. The same rule should obtain with respect to the court's legal conclusions, particularly since the Attorney General herself has acknowledged that she is controlled by those decisions. See 28 C.F.R. § 51.56; 28 C.F.R. § 51.52(a) (Attorney General "make[s] the same determination that would have been made by the court in an action for a declaratory judgment under section 5."). Finally, no Justice Department guideline or statement considers, much less explains, how § 5 could treat

# IV. SECTION 5 PRECLEARANCE MAY NOT BE DENIED BECAUSE A CHANGE VIOLATES THE CONSTITUTION.

A distinct question, raised by dicta in Beer, is whether § 5 courts (and the Attorney General) may withhold preclearance of a voting change that satisfies the nonretrogression purpose standard of Section 5 on the grounds that it violates the Constitution. If the Court is to address this question, it should rule that constitutional issues are not properly within the province of Section 5 courts or, at a minimum, that the United States, as it has previously acknowledged, bears the burden in a § 5 proceeding of proving that a change violates the Constitution.

As the Court noted in Bossier I, dicta in Beer suggested that a constitutional violation "constituted grounds for denial of preclearance under Beer." App. 41a. Beer did not purport to interpret the meaning of § 5's "purpose," much less to suggest that it had a different meaning than the retrogression it held was the standard for determining an "effect of . . . abridging." Nor did it in any way explain or articulate what constitutional standard it was referencing. The most plausible understanding is that Beer believed that a single-member redistricting scheme violated the Constitution only if it caused retrogression by taking away a minority's "theretofore enjoyed voting rights." Richmond, 422 U.S. at 378 (quoting Gomillion, 364 U.S. at 347). See Mobile, 446 U.S. at 69 n.14 ("A districting statute otherwise acceptable, may be invalid because it fences out a racial group so as to deprive them of their pre-existing municipal vote. Gomillion v. Lightfoot, 364 U.S. 339 (1960).") (plurality) (emphasis added). It is doubtful that Beer's reference to the constitutional standard connoted a racial purpose to dilute since it was hotly contested whether this was the constitutional standard (particularly in a voting

<sup>&</sup>quot;purpose" differently than "effect"; the enforcement guidelines simply assume such a difference exists.

rights context) when Beer was decided,25 and such a conclusion is irreconcilable with other assertions in the opinion.26

But regardless of what *Beer* intended by its reference to the *constitutional* standard, the relevant point is that the *dicta* was not construing *Section 5*, much less what "purpose"

<sup>&</sup>lt;sup>25</sup> Beer was pre-Washington v. Davis, 426 U.S. 229 (1976). See Beer, 425 U.S. at 149 n.4 (Marshall, J., dissenting); Mobile, 446 U.S. at 62, 66 (plurality); id. at 85-86, 88-90 (Stevens, J., concurring); id. at 120 (Brennan, J., dissenting); S. Rep., at 19-26.

<sup>26</sup> The Beer Court said that the United States had not, and could not "rationally," allege a constitutional violation, Beer, 425 U.S. at 142 n.14. But the government had contended in the Beer lower court that "the district boundaries established by Plan II have the purpose of discriminating against black voters." Beer v. United States, 374 F. Supp. 363, 386-87 (D.D.C. 1974). And, as the lower court and dissenting opinion made clear, there was ample evidence making an assertion of discriminatory purpose. at the very least, "rational." Id.; Beer, 425 U.S. at 160-61 (Marshall, J., dissenting); cf. Rogers, 458 U.S. at 623-27. Thus, it seems clear that the Beer Court perceived a difference between allegations of invidious purpose, at least in the single-member context, and allegations of a constitutional violation. At a minimum, the Beer Court would not have assumed that the Constitution was violated if the jurisdiction failed to create a black-majority district for racial purposes. Prior to Shaw I, many believed that a jurisdiction's conceded use of race as a basis for linedrawing would not form the basis for a viable constitutional challenge absent a showing of dilutive effect on a group's voting power. Shaw 1, 509 U.S. at 658-60 (White, J., dissenting); United Jewish Org. v. Carey, 430 U.S. 144, 165-67 (1977) (plurality). As noted, Beer found that a nonretrogressive reapportionment did not have a dilutive effect, and it was quite an unsettled proposition in 1976 that deliberate creation of districts where blacks constituted a minority was necessarily dilutive of black voting power. Allen, 393 U.S. at 586 (Harlan, J., concurring in part and dissenting in part); Bossier I, App. 52a (Thomas, J., concurring). Thus, the reason that New Orleans' deliberate creation of white majority districts in Beer did not "remotely approach" a constitutional violation is because such districts are dilutive only when compared to a "hypothetical" plan creating more black-majority districts and only if one accepted the then-disputed premise that majority districts are "better" for minorities than "influence" districts. Allen, 393 U.S. at 586 (Harlan, J., concurring in part and dissenting in part).

meant under that statute. To the contrary, *Beer* was at pains to emphasize that its construction of § 5 was entirely distinct from its understanding of constitutional norms:

In evaluating this claim, it is important to note at the outset that the question is not one of constitutional law, but of statutory construction. A determination of when a legislative reapportionment has "the effect of denying or abridging the right to vote on account of race or color," must depend, therefore, upon the intent of Congress in enacting the Voting Rights Act and specifically § 5.

Beer, 425 U.S. at 140-41 (footnote omitted).

The upshot of the Beer dicta, then, is the unexceptional proposition that a reapportionment which satisfies § 5 may nonetheless violate the Constitution. Read in isolation, it is true, Beer suggests the more troubling proposal that the Section 5 court itself may adjudicate constitutional issues and withhold preclearance on that basis. This Court has subsequently explained, however, that the Beer dicta was not intended to suggest that a constitutional violation affords a basis for a Section 5 court to deny preclearance. In Shaw 1. this Court ruled that the Beer dicta simply "declined to reach [the] question" of whether a "nonretrogressive" redistricting plan was, "for that reason, . . . immune from constitutional challenge." Shaw I, 509 U.S. at 654 (citing Beer, 425 U.S. at 142 n.14). Shaw I noted that other cases had established that "a reapportionment plan that satisfies § 5 still may be enjoined as unconstitutional," citing the provision of § 5 allowing a "subsequent action to enjoin enforcement" after the declaratory judgment has issued and Allen's ruling that "after preclearance, 'private parties may enjoin the enforcement of the new enactment . . . in traditional suits attacking its constitutionality." Id. (quoting Allen, 393 U.S. at 549-50) (emphasis added).27

Moreover, Beer's suggestion that a nonretrogressive plan may be denied preclearance if it violates the Constitution is inconsistent with Lockhart's ruling that a nonretrogressive plan "is entitled to § 5

Thus, as construed in Shaw I, Beer's dicta at most confirms the obvious point that a reapportionment plan which satisfies § 5 may still violate the Constitution and, as § 5's language itself states, may be enjoined in a subsequent constitutional challenge. Moreover, this result is the only one at all consistent with the express language of § 5. There is no basis under that statute for denying preclearance to a voting change in a § 5 proceeding if the voting change satisfies the substantive requirements of Section 5, regardless of whether it violates another federal law. The authority and jurisdiction of the three-judge court in the District of Columbia is strictly limited to issuing a declaratory judgment on whether the voting change has a "purpose [or] effect" forbidden by § 5. If the three-judge court issues a declaratory judgment that the Board's proposed redistricting plan does not have the retrogressive "purpose and effect" prohibited by § 5, the preemptive constraints of § 5 have been lifted and no federal law trumps the Board's plan. "Once a covered jurisdiction has complied with these preclearance requirements, § 5 provides no further remedy." Lopez v. Monterey County, 519 U.S. 9, 23 (1996). If the three-judge court decides to also issue an advisory opinion on the Constitution, this can be of no legal consequence because nothing in the Voting Rights Act makes such a constitutional determination a prerequisite to implementing the jurisdiction's voting changes and the three-judge court has no subject matter jurisdiction to rule on any constitutional violation.

Amending § 5 to add the requirement that a change satisfy the Constitution would also make nonsense of the language in § 5 allowing a subsequent suit to enjoin a precleared change, and would be an invitation to relitigation and inconsistent judgments. If Congress intended for the Section 5 court to make a constitutional determination before preclearance, it is doubtful it would have

preclearance," without referencing any possible exception for an unconstitutional nonretrogressive plan. Lockhart, 460 U.S. at 134 (emphasis added).

expressly authorized a subsequent constitutional challenge. This would simply create the potential for inconsistent judgments and duplicative litigation.

This further confirms that Congress intended to limit the extraordinary burdens imposed upon sovereign jurisdictions by using § 5 to resolve only the manageable substantive question of whether there is dilution compared to the cognizable benchmark of the existing practice. Requiring a covered jurisdiction to also, in essence, sue itself under the Constitution and disprove the validity of hypothetical alternatives limited only by the imagination of Justice Department lawyers (and then perhaps litigate those same issues again in a defensive lawsuit in district court) would increase the already "substantial federalism costs" imposed by § 5. Lopez v. Monterey County, 119 S. Ct. 693, 703 (1999) (internal quotations omitted).<sup>28</sup>

<sup>&</sup>lt;sup>28</sup> For the third time, appellants rely on footnote 31 in the 1982 Senate Report to argue that the 1982 Congress thought Beer authorized a denial of preclearance if a reapportionment plan violated the Constitution and thus § 5 must be so interpreted. U.S. Br. 29 (citing S. Rep., at 12 n.31). The authors of the same Senate Report footnote, however, also thought that "the rule laid down in Beer governed ameliorative changes," rather than nonretrogressive ones, and that Beer invalidated voting plans which violated the White v. Regester "results standard" later incorporated into § 2. See S. Rep., at 12 n.31; Lockhart, 460 U.S. at 145 (Marshall, J., concurring in part and dissenting in part) (emphasis in original); Bossier I, App. 43a; 73a. This Court nonetheless ruled precisely to the contrary in both Lockhart and Bossier I because the proposed interpretation offered in the Senate Report footnote was contrary to the language and structure of § 5. Bossier I, App. 43a. The United States suggests that this appeal is different because the issue here "involves Congress's approval of . . . Beer." U.S. Br. 29 n.10. But the Senate Report footnote also approved Beer's purported incorporation of White v. Regester "results" and Beer's purported limitation to only ameliorative changes. This does not change the fact that, yet again, the Senate Report's "interpretation" is contrary to both the plain language of the statute and, for that matter, this Court's subsequent interpretation of Beer in Shaw 1. Thus, this footnote can be given "great weight" only if the Court abandons both its longstanding principle that legislative history cannot affect plain statutory language and the principle that "it is the

Appellants nonetheless conclusorily assert that Congress simply could not have intended that the Attorney General blind her eyes to unconstitutional voting discrimination. U.S. Br. 22. Congress concededly did, however, bar the Attorney General from objecting to even a "clear violation" of § 2. Bossier 1, App. 45a; App. 62a (Stevens, J., dissenting). Presumably the 1982 Congress was as concerned about a clear § 2 violation as it was about an ambiguous constitutional violation. This is particularly true since it thought that the amended § 2 standard was the correct constitutional standard (and the established one prior to Mobile) and because it thought that "unintended" deprivations of minority voting rights were just as nefarious as actions taken with a discriminatory "intent." S. Rep., at 19-26, 30, 36-37.

As this reflects, there is nothing "implausible" about Congress determining that a violation of other voting rights guarantees affords no basis for objecting under § 5. U.S. Br. 20. The Attorney General's preclearance of changes is not tantamount to an "endorsement"; it is simply an acknowledgement of the "limited substantive" scope of § 5. Bush, 517 U.S. at 982. The fact that the Attorney General and this Court were forced to preclear the two at-large seats retained in the Beer reapportionment plan, even if they were retained for blatantly discriminatory reasons, hardly suggests that the Attorney General or this Court "tolerated" such an invidious motive. Beer, 425 U.S. at 138. The same is true of a single-member redistricting plan that, for whatever reason, simply retains the racial percentages contained in the prior redistricting plan. Granting preclearance simply recognizes the fact that practices which violate laws other than § 5 should be challenged under the laws which render them illegal.

At the same time, having local district courts, rather than the District of Columbia Section 5 court, adjudicate constitutional violations of proposed voting changes would not place

function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means." Pierce v. Underwood, 487 U.S. 552, 566 (1988); see U.S. Br. 29 n.10.

the United States or minority plaintiffs at any procedural disadvantage. For, as the United States itself acknowledged in Bossier I, if Beer is construed as injecting unconstitutional dilution claims into § 5 proceedings, the language of that opinion shows that "the burden to show dilution as a bar to preclearance remains with the Attorney General." U.S. Br. in Bossier I at 43 (emphasis added). Specifically, the United States brief pointed to the passage in Beer where "the Court stated that '[t]he United States has made no claim that [the disputed plan] suffers from any such [constitutional] disability, nor could it rationally do so." Id. (quoting 425 U.S. at 142 n.14) (emphasis added by U.S. Br.) (second bracket added).29 The concession that it has the burden is well-taken because (in addition to the Beer language) the burden on submitting jurisdictions under § 5 is only to show that their change is "free of the purpose and effect" proscribed by Section 5. South Carolina v. Katzenbach, 383 U.S. 301, 355 (1966). There is no suggestion that the jurisdiction must also prove itself innocent of other potential violations.

Thus, if the Constitution is to be injected into § 5 litigation, this requires at most that the jurisdiction disprove a violation of § 5 – show the absence of a retrogressive purpose and effect – while the United States would have to demonstrate a constitutional violation. Under the Court's well-established precedent, this means, in redistricting cases where "the legislature always is aware of race," Shaw 1, 509 U.S. at 646 (emphasis in original), that the United States' burden is to show "that race was the predominant factor motivating the legislature's decision." Miller, 515 U.S. at 916. Outside the redistricting context, it must show that race was a "motivating factor" unless the jurisdiction shows that it would have made the same decision without considering race. Arlington

<sup>29</sup> Since the United States in Bossier I attempted to show that Beer authorized § 2, as well as constitutional, challenges, it conceded that Beer also placed the burden on the Attorney General in § 2 challenges it thought could be brought in § 5 proceedings.

Heights, 429 U.S. at 270-71 n.21; Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977).

Since the United States concededly would have the burden to show a constitutional violation regardless of whether the litigation is in the District of Columbia Section 5 court or a traditional district court, this is an additional reason not to stretch § 5 beyond its language to expand the Section 5 court's jurisdiction. Indeed, this Court has frequently noted that local district courts are best situated to resolve constitutional voting rights challenges since analysis of that evidence requires an "intensely local appraisa?" White v. Regester, 412 U.S. at 769-70. Thus, interpreting § 5 as not encompassing constitutional issues would have no cognizable effect on the judiciary's ability to resolve those constitutional claims or in any way allow any invidious purpose to go unremedied. 30

Equally important, a nonretrogression standard in 1999, standing alone, is an extraordinarily muscular prophylactic barrier against any effort to improperly dilute minority voting strength. Each covered § 5 jurisdiction has already had at least two, and usually three, redistricting plans affirmatively found to be free of any discriminatory purpose or effect in the 1970s, 80s and 90s. See 42 U.S.C. § 1973c (some jurisdictions covered for practices in effect "on November 1, 1972"). In the 1990s, such preclearance was forthcoming from the

traditional district court has struck down an existing voting practice under the Fifteenth Amendment because of discriminatory purpose, the Attorney General would somehow be forced to preclear a new practice under § 5 that had precisely the same discriminatory purpose and effect. U.S. Br. 22. But, of course, a district court exercising its remedial jurisdiction could not possibly allow the offending jurisdiction to "cure" its adjudged violation by substituting precisely the same plan for precisely the same unconstitutional motive. See, e.g., Connor v. Finch, 431 U.S. 407, 414-15 (1977); Abrams, 521 U.S. at 84-86. Thus, no such discriminatory substitute plan would ever be eligible to be submitted for preclearance. Id. The question here, however, is simply whether § 5 contemplates that these Fifteenth Amendment questions will be decided in the first instance by these district courts or by the Justice Department. See infra pp. 41-42.

Justice Department only if it found compliance with § 2 and if it maximized minority districts to the extent arguably permitted (and often beyond what was permitted) by the constitutional guarantees for nonminority citizens. See Bossier I. App. 32a; Shaw v. Hunt, 517 U.S. 899, 902 (1996) ("Shaw II"); Miller, 515 U.S. at 917. Thus, in striking contrast to the 1970s, the retrogression benchmark in the 2000 redistricting cycle is set extraordinarily high. Simply maintaining that minority maximization status quo under a nonretrogression principle will not perpetuate any discriminatory redistricting plans. It will maintain, rather, a system which maximizes minority voting strength to the extent constitutionally permissible. It is extraordinarily implausible that a submitting jurisdiction, except in the rarest of cases, could avoid retrogressing from the race-conscious redistricting required in the 1990s and still unconstitutionally dilute minority voting strength. As noted, those rare cases can be swiftly adjudicated in local district courts pursuant to the same evidentiary standards as would be employed in the three-judge court.

On the other hand, injecting constitutional issues into § 5 adjudication would create an unworkable administrative system for § 5. First, there is simply no place in the traditional § 5 administrative scheme for the shifting burdens that all agree are necessary if the Constitution is to be part of § 5 analysis. The Justice Department itself has forthrightly acknowledged that it cannot reasonably administer a scheme where the Attorney General has the burden of proving a violation to herself: "Unlike court proceedings, administrative review under § 5 - which is by statute limited to 60 days upon receipt of all necessary information - does not include the kind of hearing procedures that provide for the full presentation of evidence and rebuttal evidence by contesting parties and others interested in the proceedings." Revision of Procedure for the Administration of Section 5 of the Voting Rights Act of 1965, 52 Fed. Reg. 487 (Jan. 6, 1987).

Perhaps more troubling, in adjudicating this constitutional issue, the Justice Department takes the extraordinary view that it is perfectly appropriate to find that the submitting jurisdiction acted with a "discriminatory purpose" even if it "did not take race into account in any way." App. 102a n.12. Thus, as the Department candidly argued to this Court in Miller and Bossier I, even if there is not a scintilla of evidence that a jurisdiction has departed from the traditional redistricting principles it would have used in a colorblind world, a discriminatory purpose finding can nonetheless be premised solely on the existence of racial bloc voting and a history of discrimination - phenomena that exist in many covered jurisdictions, which the submitting jurisdiction cannot change and which will exist regardless of which redistricting plan is chosen. U.S. Br. in Bossier I at 17-19; U.S. Br. in Miller at 32-33. Indeed, as the objection letter in this case makes clear, the Justice Department believes that a jurisdiction must maximize minority voting strength unless there is a compelling reason which necessarily forecloses the maximization alternative. See App. 235a (Board is "not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect the candidates of choice."). Thus, if granted authority over constitutional issues, the Justice Department will impermissibly exercise this unreviewable authority to find that the submitting jurisdiction acted with discriminatory purpose simply because, as here and in the Shaw gerrymander cases, it is prevented from maximizing by perfectly valid state laws and/or traditional districting principles. Morris v. Gressette, 342 U.S. 491 (1977). The necessary result of this empowerment is to again plunge this Court and covered jurisdictions into another decade-long cycle of litigation concerning whether the Justice Department's maximization policies have coerced jurisdictions to engage in an unconstitutional gerrymander against nonminorities. As this Court has previously noted, these Justice Department departures from neutral enforcement of accepted nondiscrimination principles raise serious constitutional concerns about § 5 itself. Miller, 515 U.S. at 926-27.

In sum, (1) § 5's retrogressive purpose standard, standing alone, is an extraordinary bulwark against unconstitutional

minority vote dilution; (2) judicial remedies are readily available to strike down any voting changes with a discriminatory purpose; and (3) there are compelling policy reasons not to transfer adjudication of this constitutional issue from neutral magistrates to an unreviewable bureaucracy which cannot administer a burden shift and which consistently applies erroneous (and unconstitutional) legal standards to adjudicate the Constitution. At most, even if appellants' reading of *Beer* is accepted, the question on remand should be whether the defendants have carried *their* burden of proving that the Board's redistricting plan violated the Constitution.

# V. THE DISTRICT COURT'S DISCRIMINATORY PURPOSE FINDINGS ARE NOT PROPERLY BEFORE THIS COURT AND ARE NOT CLEARLY ERRONEOUS.

The only question presented by appellants to this Court is the purely legal issue of whether the district court misconstrued § 5 by concluding that it reached only retrogressive intent. See U.S. J.S. at I; A-I J.S. at i. Unlike the first appeal, neither appellant raised any question as to whether the district court improperly found no discriminatory purpose in this case by misapplying the Arlington Heights factors or making clearly erroneous factual findings. Thus, whether the Board had a discriminatory purpose is simply not before the Court, and the Court has no basis for reversing any findings the lower court made on that issue. Yee v. City of Escondido, 505 U.S. 519, 537 (1992); Sup. Ct. R. 14.1(a); Sup. Ct. R. 18.3. Rather, if the Court finds that the lower court erred by failing to examine the discriminatory purpose issue, it must remand so the lower court may apply the proper legal standard to the facts. Yet, without any explanation, both appellants devote roughly half their briefs to this nonexistent, fact-bound issue.

Although this issue is entirely irrelevant, we will nonetheless briefly explain why the district court's findings on discriminatory purpose are not "clearly erroneous" and therefore may not be set aside. Pullman-Standard, Div. of Pullman,

Inc. v. Swint, 456 U.S. 273, 287 (1982).31 The Board was offered a choice between two alternative redistricting plans. As the undisputed facts establish, one plan had been precleared by the Justice Department the previous year, was supported by the black member of the Police Jury's Reapportionment Committee, kept intact every black population concentration, enhanced minority voting strength and clearly complied with state law and traditional districting principles. such as compactness and maintaining the integrity of municipal, district and precinct boundaries, J.A. 508; J.A. 504. The other alternative concededly constituted a facial violation of state law which rendered the plan "null and void," required more than doubling the number of existing precincts, split every municipal boundary in the Parish, grossly departed from the Police Jury districts and the "best" version was subsequently condemned by a federal court as "resembling" an octopus, as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population. . . . " J.A. 509-10; J.A. 51. See infra pp. 46-47.

The short, and dispositive, explanation for why the district court found that the Board had a completely legitimate, nondiscriminatory reason for rejecting the proposed NAACP alternative is that this alternative (or even any variant

<sup>31</sup> Although appellants claim that "general" findings of fact are subject to heightened scrutiny, there is an finding more general than a determination of "discriminatory intent," and the Court has held that such a finding is subject to Sup. Ct. R. 52. Pullman, 456 U.S. at 287. Indeed, the Court has emphasized that factual findings " 'as to the design, motive and intent with which men act' [are] peculiarly factual issues for the trier of fact." Id. at 288 (quoting United States v. Yellow Cab Co., 338 U.S. 338, 341 (1949)). See also Pleasant Grove, 479 U.S. at 469 (1987) (holding that under § 5, "findings, both as to the purpose [of adopting a voting change] and with respect to the weight of evidence regarding the purpose of the [changes] at issue, are findings of fact that we must accept unless clearly erroneous"); Rogers, 458 U.S. at 623.

thereof)<sup>32</sup> facially violated a state law that was impossible to evade. The Board was required to use the precincts created by the Police Jury (and used by the Police Jury for its districts) as the "building blocks" for the Board's districts. Louisiana law is quite unequivocal on this point: "The boundaries of any election district for a new apportionment plan from which members of a Board are elected shall contain whole precincts established by the parish governing authority [i.e., the Police Jury]. . . . " J.A. 376-77. Any failure to abide by this mandatory requirement would render the Board's plan "null and void."33 J.A. 377. At the same time, the local NAACP claimed that the Voting Rights Act required the adoption of a plan with two black majority districts, even though this concededly violated state law because a black majority district could not be created without splitting numerous precincts. App. 195a; J.A. 195-96. Confronted with this allegedly insoluble conflict between state and federal law, the Board chose the one plan it knew complied with both sets of laws: the Police Jury plan which the Justice Department had precleared just the year before. Because this "guaranteed preclearance" solved the federal law problem, it rendered the Police Jury plan markedly superior to any other plan that complied with state law (since any plan that had a black majority district, and thus also had a chance at preclearance, violated state law by splitting precincts.)

Appellants contend that the Police Jury, as opposed to the Board, had the authority to split precincts and that such splits

<sup>&</sup>lt;sup>32</sup> Two "Cooper" plans were formulated by intervenors after the Board had adopted its plan, and thus are clearly irrelevant. In any event, even the "best" of these plans splits all but one of the Parish's towns, results in 31 precinct splits, and is not compact. J.A. 421-22, 440-54, 512.

Jury had modified the precincts used in the 1980s when it adopted its 1991 redistricting plan. No state law prohibits the Police Jury from changing its prior precincts to reflect population shifts and conform with its new districts, but once it has done so, the Board must use those precincts to build its districts. J.A. 389.

are both "legal and common." U.S. Br. 46; A-I Br. 39. This is extraordinarily disingenuous. For, prior to December 31, 1992, the Police Jury, just like the Board, was legally prohibited from altering a single precinct line. J.A. 389. But, under state law, the Board was required to redistrict prior to December 31, 1992. J.A. 88-89, 406-07. Thus, during the time that the Board was required to redistrict, lest the plan be "null and void," any splitting of precincts by it or the Police Jury would render the plan "null and void." It was therefore, impossible for either the Board or the Police Jury to sanction any precinct splits in the Board's redistricting plan during the period when the Board could lawfully redistrict.34 This is hardly a coincidence, but was the manner in which state law ensured that all school boards used the Police Jury precincts as "building blocks" for their districts. Of course, after both the Board and the Police Jury had built their districts with the same precincts, there was no problem with the Police Jury consolidating those precincts within district lines to save money by having fewer precincts. J.A. 377. But, contrary to what the United States argued in Bossier I, this authority to consolidate precincts after they had been used to build the Board districts hardly authorized the Police Jury or Board to split the existing precincts, and thus create more precincts.35

<sup>&</sup>lt;sup>34</sup> Appellants' contention that such precinct splits are "common" is equally misleading. U.S. Br. 46. Appellants' own witness was able to cite only three examples of *other* Louisiana jurisdictions that had split a "few" precincts. J.A. 214. It appears that those three Boards used the *same* precincts as those used by the Police Jury, which is perfectly legal (*see supra* note 33) or were done to accommodate the Justice Department objections, as also permitted by state law. J.A. 377. These examples are thus irrelevant because they involve entirely dissimilar situations.

Jury to "alter" precinct lines can only be understood as a reference to consolidating the precincts after the Board's plan was complete; not splitting precincts in the manner done by the NAACP plan. U.S. Br. 37 (citing App. 174a ¶ 102). It is stipulated that the cartographer discussed "consolidat[ing] some precincts" "after January 1, 1993" with members of

Far from being a post hoc rationalization, the undisputed facts establish that the contemporaneous explanation for rejecting the NAACP alternative was that the district attorney and the Board's cartographer both correctly informed the Board that the NAACP's massive precinct splitting was a facial violation of state law. J.A. 177; App. 83a-84a; App. 179a ¶ 102; J.A. 180. Indeed, the NAACP itself recognized that its plan violated the state law prohibition against precinct splits, but merely maintained that the Voting Rights Act preempted this law. J.A. 195-96. The unrebutted facts also establish that prior Board plans had never split the Police Jury precincts and that the Board had never considered any plan that split precincts in the 1990 cycle. J.A. 250-51; Tr. (Myrick) at 118.

Even if state law did not render any plan with a black majority district facially void, every objective reason strongly counseled against more than doubling the existing number of precincts in this poor rural parish. This Court has already vividly described the "electoral nightmare" and "multiplied" costs caused by racially-motivated line drawings which required Harris County, Texas to almost double its existing precincts and "thrust" voters "into new and unfamiliar precinct alignments, a few with populations as low as 20 voters." Bush, 517 U.S. at 974 (quotations omitted). In Bossier, the number of precincts would have increased 115%, from 56 to 121, and 17 of those 65 new precincts would have had fewer than 20 people in them. J.A. 455-96. The cost of each new precinct was approximately \$850 or, in the aggregate, \$55,250, for every state, federal and local election. J.A. 275.

the Board and Police Jury. App. 165a ¶ 61 (emphasis added). Conversely, the cartographer concededly knew and informed the Board that the Board's district lines could not split precinct lines under state law, and he never presented any of the Board members with a plan that split any precinct lines. J.A. 250-51; Tr. (Myrick) at 118.

<sup>36</sup> See Shaw II, 517 U.S. at 912 (criticizing precinct splits); Johnson v. Miller, 864 F. Supp. 1354, 1367, 1376 (S.D. Ga. 1994) (same).

Finally, "cutting across pre-existing precinct lines . . . is part of the constitutional problem insofar as it disrupts nonracial bases of political identity and thus intensifies the emphasis on race." Bush, 517 U.S. at 980.

Appellants allege that the Board's plan did not honor two "factors that it had previously considered 'paramount.' " A-I Br. 29. First, appellants make much of the fact that the Board's plan supposedly "pitted two pairs of Board incumbents against each other." U.S. Br. 38; A-I Br. 29. But pairing two incumbents is a problem only if both members of the pair will seek reelection, and the unrebutted testimony establishes that one member of each of these pairs had already decided not to run for reelection. See J.A. 54, 103, 108. (Incumbent Musgrove, paired with incumbent Jackson, had decided not to run again; incumbent Gray, paired with incumbent Harvey, had decided not to run again). Thus, unlike the NAACP Plan which greatly disfavored incumbents by radically redrawing every school district and pairing them, Tr. (Musgrove) at 46, the Police Jury plan was in no way inconsistent with the Board's interest in protecting incumbents. Second, appellants note that there was not a school in each district in the Board's plan. Yet, there is no evidence that appellants' newly-minted principle was a "factor[] that [the Board] had previously considered paramount," nor that the NAACP plan advanced this interest. A-I Br. 29. To the contrary, the Board never gave the cartographer school attendance maps or otherwise indicated this was a criterion. App. 174a ¶ 88. Since board members represent people, not buildings, there is no basis for believing that this is a traditional districting criterion, and appellants cannot cite a single case suggesting it is. Conversely, the Board's plan was superior to the NAACP plan for all recognized districting principles - compactness, preserving municipal and other boundaries, etc. - and the appellants cannot advance a single race-neutral reason for adopting the maximizing alternative. J.A. 504, 509; J.A. 455-96; Joiner Rebuttal Testimony at 7.

Appellants also maintain that the Board "rushed to a decision" in September and October 1992, when its elections were two years away. A-I Br. 36, 37; U.S. Br. 6. Again, the Board was required by state law to complete its redistricting procedures by *December 31*, 1992, J.A. 88, and thus the fact that its *elections* were two years off is utterly irrelevant.

Appellants also suggest that the Board has somehow violated its desegregation decree, even though the Justice Department has never so argued in the school desegregation case, or sought sanctions or modification of the decree. There is no evidence that the school's alleged racial imbalance is attributable to the Board's conduct, as opposed to demographic factors over which it has no control. See Freeman v. Pitts, 503 U.S. 467, 494 (1992). Moreover, contrary to appellants' suggestion, this Board's disbandment of a newly-constituted biracial committee in no way suggests noncompliance with any school desegregation decree or duty. In fact, the Board voluntarily established this committee in 1993, at the request of the NAACP. App. 183a ¶ 113.37

<sup>37</sup> The committee was dismissed when it exceeded its desegregation advisory role and instead began to involve itself in educational policy matters that are "committed to the control of state and local authorities." Board of Curators of the Univ. of Mo. v. Horowitz, 435 U.S. 78, 91 (1978). The initial biracial committee last met twenty-three years ago in 1976, when perhaps one current Board member was serving. App. 182a ¶ 112. This committee was established pursuant to a consent decree and was charged with "mak[ing] recommendations as to whether or not the present desegregation plan is to be reviewed." Id. (internal quotations omitted). This plainly implies that it was intended merely to make specific recommendations for a unitary system, not serve as a permanent governmental bureaucracy. It is thus entirely understandable that the interest of the volunteer citizens who served on the committee waned over time. There is nothing in the record suggesting that the Justice Department, the private plaintiffs or the black community ever complained about its dormancy. Indeed, the lawyer for the private desegregation plaintiffs since the 1970s testified that he was unaware of any biracial committee requirement until 1993. Davis Testimony at 12.

In sum, while it is theoretically conceivable that the Board made the right decision for the wrong reason, it is not possible that the district court's contrary conclusion is "clearly erroneous." Anderson v. Bessemer City, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.")<sup>38</sup>

#### CONCLUSION

The appeal should be dismissed for want of jurisdiction, or in the alternative, the judgment of the district court should be affirmed.

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<sup>&</sup>lt;sup>38</sup> The sum total of appellants' purpose case thus reduces to the complaint that the district court failed to sufficiently discount the Board's appointment of a black member for the only vacancy available and did not put the most nefarious possible spin on certain hearsay statements that Board members allegedly conveyed to the appellant-intervenor and another civil rights advocate. App. 108a-09a. This quibbling over the import (or existence) of, at worst, ambiguous acts and statements is of no consequence because "such questions of credibility are matters for the District Court," and this Court will not "second-guess the District Court's assessment of the witnesses' testimony." Bush, 517 U.S. at 970, 971. As even the dissent conceded, the Board members' alleged "statements are subject to different interpretations" and "standing alone would certainly be insufficient to show discriminatory purpose." App. 133a.



Nos. 98-405 and 98-406

FILED.

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# In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

#### REPLY BRIEF FOR THE FEDERAL APPELLANT

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## In the Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-405

JANET RENO, ATTORNEY GENERAL, APPELLANT

D.

BOSSIER PARISH SCHOOL BOARD

No. 98-406

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

#### REPLY BRIEF FOR THE FEDERAL APPELLANT

#### 1. Justiciability.

Appellee argues (Bd. Br. 8-11)<sup>1</sup> that this case is moot because the next regularly scheduled School Board election will not be held until 2002, by which time it should have adopted a new redistricting plan. As we have explained in our brief in opposition to appellee's motion to dismiss or affirm (at 1-3), appellants retain a live interest in the outcome of this litigation. In Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, Congress granted voters (and the Attorney General) a statutory right against the

As used in this reply brief, "Bd. Br." refers to appellee's brief on the merits in this Court.

implementation of voting changes that have not been properly precleared.<sup>2</sup> Thus, if this Court reverses the district court's preclearance judgment, voters in Bossier Parish might well be entitled to a special election held under a lawful plan that complies fully with Section 5. That lawful plan might be developed by the Board and precleared by the Attorney General or the district court, or (should the Board fail to hold a special election on its own initiative) elections might be ordered by a federal court under a plan fashioned by that court as a remedy for the Board's violation of Section 5.

Appellee suggests (Bd. Br. 11) that, if the district court's preclearance judgment is reversed and new elections are ordered, minority voters in the Parish would receive no benefit because its previous 1980s plan was little different from the 1992 plan, in terms of its effect on minority voting That argument proceeds from the incorrect assumption that there would be no objection to holding elections under the 1980s plan. In fact, the 1980s plan is severely malapportioned. See J.S. App. 171a-172a. It is appropriate to assume that, if the district court's judgment is reversed and the Board then chooses or is ordered to hold a special election, the Board would not hold the election under an unconstitutional plan; and, if the Board attempted to do so, use of the 1980s plan would likely be promptly challenged in district court. Cf. J.A. 41-42 (prior equal-apportionment challenge to implementation of 1980s plan).

Even if this case were moot, the appropriate action would be for the Court to vacate the lower court's judgment and to

<sup>&</sup>lt;sup>2</sup> In a related context, this Court has consistently held that "[t]he . . . injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 578 (1992); see Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 208-212 (1972).

remand the case with instructions to dismiss the complaint. See Gov't Br. in Opp. to Mot. to Dism. or Aff. 2-3 n.1. Appellee erroneously relies (Bd. Br. 11-12 n.10) on U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 26 (1994) to argue that the Court should dismiss the appeals rather than vacate and remand. In that case, however, the controversy became moot because the parties had voluntarily settled the case. In such a situation, "the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur." Id. at 25. The Court reaffirmed, however, that "[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." Ibid. That is the case here, where the government and the Price appellants have appealed twice from the district court's decision to preclear the 1992 plan.

#### 2. The Proper Scope of Section 5.

a. Appellee's attempt to argue that the purpose prong of Section 5 is limited to retrogressive intent leads it to the remarkable assertion that there is little if any connection between Section 5 and the Fifteenth Amendment. Bd. Br. 25-28; see Bd. Br. 27 ("there is very little congruence between the Constitution and § 5"); Bd. Br. 28 n.21 ("nothing in the legislative history indicates that § 5 reaches 'racially motivated voting changes' that violate the Constitution"). The Voting Rights Act of 1965 itself, however, stated that its principal animating purpose was "[t]o enforce the fifteenth amendment to the Constitution of the United States." Pub. L. No. 89-110, 79 Stat. 437.3

<sup>&</sup>lt;sup>3</sup> See also South Carolina v. Katzenbach, 383 U.S. 301, 324-327 (1966) (explaining that Congress enacted Section 5 to enforce the Fifteenth Amendment); id. at 337 (upholding Section 5 as "a valid means for carry-

The weakness of appellee's effort to divorce Section 5 from the Fifteenth Amendment is amply demonstrated by the outlandish consequences of its argument. Under appellee's theory, if in 1965 a town had (by law or practice) effectively barred all blacks from voting in town elections, and had then, after the enactment of the Voting Rights Act, enacted legislation with the purpose of accomplishing the same result-for example, by altering the jurisdiction's boundaries to exclude all blacks from residency (cf. Gomillion v. Lightfoot, 364 U.S. 339 (1960))-the Attorney General or the federal courts would have been required to preclear that voting change, because it would not have had the purpose or effect of making the position of blacks in the town worse. Or, if an all-white town enacted legislation prohibiting blacks from voting, that legislation would also have to be precleared for the same reason, even though it would flatly violate the Fifteenth Amendment (cf. City of Pleasant Grove v. United States, 479 U.S. 462 (1987)).4 The Court should

ing out the commands of the Fifteenth Amendment"); S. Rep. No. 162, 89th Cong., 1st Sess., Pt. 3, at 17 (1965) (joint statement of 12 members of Judiciary Committee) ("The proposed legislation implements the explicit command of the 15th amendment."); H.R. Rep. No. 439, 89th Cong., 1st Sess. 6 (1965) ("The bill, as amended, is designed primarily to enforce the 15th amendment to the Constitution of the United States and is also designed to enforce the 14th amendment.").

<sup>&</sup>lt;sup>4</sup> In suggesting that such results would be unexceptionable, appellee argues (Bd. Br. 20) that Beer v. United States, 425 U.S. 130 (1976), held that "[d]eliberate maintenance of an at-large system for purely discriminatory reasons does not offend § 5." See also Bd. Br. 23 n.17 (noting that Beer held that New Orleans' maintenance of two at-large seats did not implicate Section 5). The discussion in Beer to which appellee refers concerned the distinct principle, unrelated to this case, that voting practices that are not changed are not subject to Section 5 at all. See 425 U.S. at 138-139. That argument is unavailing in this case; the 1992 School Board plan at issue here is, of course, a voting change. For the same reason, appellee errs in arguing (Bd. Br. 38) that the Attorney General

reject a construction of Section 5 that leads to results so demonstrably at odds with Congress's intent.<sup>5</sup>

We have also pointed out (Gov't Opening Br. 20-23) that appellee's theory is inconsistent with the specific purpose behind the preclearance requirement of Section 5, to eliminate the pattern by which jurisdictions simply replaced one unconstitutional voting practice, struck down by the courts, with another one designed to accomplish the same result, requiring further litigation by the Attorney General and private parties to enjoin the replacement plan. Appellee argues (Bd. Br. 40 n.30) that a district court would not permit a covered jurisdiction to substitute one discriminatory plan for another. A jurisdiction might well try to accomplish just such substitution, however. Under standard

and this Court were "forced to preclear the two at-large seats retained in the Beer reapportionment plan." The Attorney General and the Court were not forced to preclear those seats; rather, they were not subject to preclearance at all, because their retention did not constitute a voting change. See 425 U.S. at 139. It is true, of course, that because Section 5 is limited to voting changes, it cannot be used to root out all unconstitutional voting discrimination. Congress's decision to tailor the powerful remedy of preclearance to voting changes, however, reflects its particular purpose in Section 5 to prevent covered jurisdictions from avoiding the dictates of the Constitution by replacing one unconstitutional voting plan with another. See Gov't Opening Br. 20-23.

<sup>&</sup>lt;sup>5</sup> Appellee erroneously contends that Beer and City of Lockhart v. United States, 460 U.S. 125 (1983), concluded that Section 5 "did not in any way prohibit" the perpetuation of existing discrimination (see Bd. Br. 22-23 & n.17). Both cases evaluated the plans at issue only under the effect prong of Section 5, and not the purpose prong, and found no retrogressive effect. While it is true that a voting change may be denied preclearance under the effect prong of Section 5 only if it makes the position of minorities worse than before, no decision of this Court suggests that a voting change should be precleared if it has the purpose of reinforcing existing racial discrimination in official voting practices. See South Carolina, 383 U.S. at 315-316 (noting that purpose of Section 5 was to prevent covered jurisdictions from "perpetuat[ing]" voting discrimination).

rules governing constitutional litigation, if a district court strikes down one voting plan as unconstitutional, it is up to the covered jurisdiction in the first instance to develop a new plan. See Chapman v. Meier, 420 U.S. 1, 27 (1975). The government and voters would then be required to go back to the district court, and would bear the burden to prove that the substitute plan was unconstitutional in order to prevent its implementation-exactly the unsatisfactory situation before Section 5 was enacted. Even if the jurisdiction's effort was eventually stymied by the district court, it would have successfully delayed minority voters' enjoyment of the full exercise of their right to vote. That prospect is impossible to square with Congress's specific objective in Section 5, "to shift the advantage of time and inertia from the perpetrators of the evil to its victims." South Carolina v. Katzenbach, 383 U.S. 301, 328 (1966).

b. The plain language of Section 5 prohibits enforcement of a voting change enacted with the "purpose" of "denying or abridging the right to vote on account of race" (42 U.S.C. 1973c)-language that straightforwardly reaches a voting change enacted with the purpose to discriminate against black voters. Appellee presents several unpersuasive arguments to avoid the thrust of this language. It argues (Bd. Br. 26), for example, that "on account of race," as used in Section 5, cannot refer to unconstitutional, purposeful racial discrimination because Congress used the same language in amended Section 2 of the Act, 42 U.S.C. 1973, which does not contain a purpose requirement. But Section 2 does reach purposeful racial discrimination in official voting practices, see City of Mobile v. Bolden, 446 U.S. 55, 60-61 (1980) (plurality opinion) (emphasizing close connection between Section 2 and Fifteenth Amendment), even though, like Section 5, it reaches more broadly as well. The fact that neither statute reaches only purposeful discrimination hardly suggests that purposeful discrimination is outside either one.<sup>6</sup>

Appellee also argues (Bd. Br. 19-20) that, because Beer v. United States, 425 U.S. 130, 141 (1976), held that the effect prong of Section 5 reaches only voting changes having a retrogressive effect, the purpose prong must also be limited to changes enacted with the intent to retrogress. We have explained, however, that Beer's construction of the effect prong of Section 5 reflects concerns about that statute's reach beyond the moorings of the Constitution. See Gov't Opening Br. 29-32. Beer does not suggest that the separate purpose prong of Section 5 fails to reach all voting changes enacted with an unconstitutional, racially discriminatory purpose. To the contrary, the Court observed in Beer that a voting change "could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and vet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional." 425 U.S. at 142 n.14.

In an effort to avoid the force of that language in Beer, appellee suggests (Bd. Br. 35) that Beer merely observed that "a reapportionment which satisfies § 5 may nonetheless violate the Constitution." But the Court in Beer, immediately after the language quoted above, proceeded to observe that the government had "made no claim" that the districts at issue in that case were unconstitutional. See 425 U.S. at

<sup>&</sup>lt;sup>6</sup> Moreover, when the 1982 Senate Report to which appellee cites explained that the phrase "on account of race" does not refer to purposeful discrimination, it stressed that Section 5 expressly covers voting changes enacted with the purpose to discriminate on account of race, by its use of the *separate* term "purpose." The point made by the Senate Report was that enactments having the "effect" (or "result") of denying or abridging the right to vote "on account of race" should be covered in Section 2, and that, in the context of effects as well, the phrase "on account of race" does not refer to purposeful discrimination. See S. Rep. No. 417, 97th Cong., 2d Sess. 27-28 n.109 (1982).

142 n.14. The Court discussed the Constitution precisely because of its relevance to the standards for preclearance under Section 5. The Court also stated in *Beer* that an ameliorative plan "cannot violate § 5 unless [it] so discriminates on the basis of race or color as to violate the Constitution." *Id.* at 141 (emphasis added). Thus, the Court's discussion about unconstitutional voting changes related directly to its construction of Section 5. Congress, moreover, codified that precise discussion in *Beer* when it subsequently reenacted Section 5 in 1982. See Gov't Opening Br. 29.

Furthermore, if appellee's exceedingly narrow construction of Section 5's purpose prong were correct, it is difficult to see why Congress would have adopted it. As a practical matter, the purpose prong as so construed would add little if anything to the retrogression analysis required under the effect prong. In almost every case, the Section 5 inquiry would be effectively exhausted by an analysis of the effects of a voting change to determine whether the change was retrogressive. If the change was retrogressive, then preclearance would be denied without any consideration of

<sup>&</sup>lt;sup>7</sup> In a particularly unpersuasive example designed to show that its construction of Section 5's purpose prong is not more narrow than the Constitution, appellee argues (Bd. Br. 27) that, if a jurisdiction decided to eliminate a majority-black district "for purely race-neutral reasons," such an action would have a retrogressive purpose, but not a discriminatory purpose in violation of the Constitution. It is difficult to see, however, that the jurisdiction's purpose in enacting such a provision, if "raceneutral," would be retrogressive (even though the effect might be). As this Court explained in Personnel Administrator v. Feeney, 442 U.S. 256, 279 & n.24 (1979), under the analytical framework of Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-266 (1977), a prohibited "purpose" implies that the decisionmaker took action "at least in part because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." If, therefore, appellee's hypothetical jurisdiction indeed acted for "race-neutral reasons," it would not have acted "because of" the plan's retrogressive effect.

the change's purpose; but if the change did not have a retrogressive effect, then (in appellee's view) preclearance could be denied only if the covered jurisdiction had enacted the voting change in an unsuccessful effort to achieve retrogression. Nothing in the text, legislative history, or decisions of this Court construing Section 5 suggests that the purpose prong has such a trivial reach, limited to the case of the incompetent retrogressor. Cf. United States v. Albertini, 472 U.S. 675, 682-683 (1985) (rejecting construction of statute that would render clause "almost superfluous").

c. Appellee's effort to wave away this Court's precedents fares no better. On this point we refer the Court to our opening brief (at 24-29), but we note that appellee's effort (Bd. Br. 28-29) to recharacterize City of Pleasant Grove, supra, is particularly strained. In that case, the Court denied preclearance to annexations by an all-white town of vacant land and land populated only by whites for the purpose of "provid[ing] for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance." 479 U.S. at 472. The Court could not have decided the case on the basis, suggested by appellee (Bd. Br. 29), that

<sup>&</sup>lt;sup>8</sup> To the contrary, the design of the statute suggests that the purpose prong was intended to reach unconstitutional, racially discriminatory enactments, and that the effect prong was designed to reach in addition those enactments that, because of their retrogressive effect on minorities' position, would impede their ability to overcome the remaining effects of past discrimination. See City of Rome v. United States, 446 U.S. 156, 175-178 (1980). In addition, some voting changes are more readily susceptible to analysis under the purpose prong than under the effect prong. For example, when a jurisdiction creates a new elected office or position, or chooses an election method for a new governing body, it may be difficult to determine whether the change is retrogressive, and a purpose analysis may be more fruitful to determine whether the change implicates Congress's concerns in Section 5. See 28 C.F.R. 51.54(b)(4).

the annexation of land then populated only by whites could have made "minority voters worse off than they were prior to the annexation," for there were no minority voters in the City of Pleasant Grove to be made "worse off."

Appellee appears to acknowledge (Bd. Br. 30 & n.23) that Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), aff'd mem., 459 U.S. 1166 (1983), rejected the position it is now advancing, but it suggests that the Court should disregard that decision because the Court mistakenly overlooked the possibility that the voting change considered there caused minor retrogression in one of the two districts at issue. We have explained (Gov't Opening Br. 27-28), however, that the appeal in Busbee was presented to this Court on precisely the opposite assumption, viz., that the plan at issue had no retrogressive purpose or effect. Nor did the government

Appellee suggests (Bd. Br. 30) that the lower court echoed City of Pleasant Grove when, in evaluating retrogressive purpose, it considered and rejected the possibility that the Board might have been motivated to break up black "voting blocks before they could be established" (emphasis omitted). This argument, we note, is impossible to square with appellee's other argument—based on the same language in the district court's opinion—that the district court was considering discriminatory, and not just retrogressive, intent when evaluating the evidence (see Bd. Br. 14-15). Moreover, the district court was expressing the view that a purpose to "divide and conquer the black vote" (J.S. App. 6a) might actually be a retrogressive purpose if there were evidence that other aspects of the Board's earlier voting plan permitted black political gains; but of course that was not so, because the previous plan was also dilutive of black votes.

<sup>&</sup>lt;sup>10</sup> See 549 F. Supp. at 516 (district court's finding that "there is no retrogression" and thus, "technically, the voting plan does not have a discriminatory effect, as that term has been construed under the Voting Rights Act") (citing Beer); see also Busbee, J.S. at i (question presented assumes no retrogressive purpose or effect); id. at 7 (arguing that the plan "significantly enhanced black voting strength" in one district while "maintaining an influential level of black voters" in the other); id. at 22 (citing district court finding of no retrogression).

argue in that case that the lower court's decision should be affirmed on the alternate basis that the plan in fact had a retrogressive effect. Appellee's reading of Busbee should be rejected because "[q]uestions which merely lurk in the record are not resolved" by summary affirmances, and "no resolution of them may be inferred." Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 183 (1979) (citations and internal quotation marks omitted).

d. Finally, to avoid the conclusion that Section 5 reaches unconstitutional, intentional vote dilution, appellee argues (Bd. Br. 19) that vote dilution is an inherently relative concept, and so suggests that the Department of Justice, in concluding that the 1992 plan was dilutive, must have been comparing that plan to the NAACP plan. 11 In determining whether a plan has an unconstitutional, racially discriminatory purpose, however, the Justice Department does not simply compare it to other, possible plans; indeed, in this case, the Department informed the Board that it "is not required by Section 5 to adopt any particular plan." J.S. App. 235a. Rather, the Department undertakes a factintensive, case-specific analysis based on Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-266 (1977), of the circumstances under which district boundary choices have been made, to determine whether or not those choices reflect an intent to minimize or cancel out minority voting strength within particular communities. That analysis takes into account whether legitimate, nondiscriminatory governmental purposes support the jurisdiction's asserted reasons for selecting those boundary lines. And while Section 5 does place the burden on the covered jurisdiction to show that its plan lacks

<sup>&</sup>lt;sup>11</sup> In its discussion of this point, appellee introduces the novel concept of "§ 5 dilution," by which it apparently means retrogression in the context of redistricting. See Bd. Br. 19-20.

a discriminatory purpose, Congress plainly did not intend that burden to be impossible for a covered jurisdiction to meet. 12 If the covered jurisdiction puts forward evidence showing that its voting change is not retrogressive and raising no concerns under the Arlington Heights framework for analyzing discriminatory purpose, the voting change is likely to be precleared, either by the Attorney General or the court, at least absent other evidence. 13

<sup>12</sup> There is no basis for appellee's suggestion (Bd. Br. 39) that, if Section 5 does require the Attorney General and the preclearance court to consider unconstitutional purpose, then the burden should be on the government to show a constitutional violation. The statute places the burden of demonstrating the absence of discriminatory purpose on the jurisdiction. See City of Pleasant Grove, 479 U.S. at 479; City of Rome, 446 U.S. at 183. Appellee's reliance on Miller v. Johnson, 515 U.S. 900, 916-917 (1995), is misplaced, for that case arose in the context of litigation by private parties challenging a districting plan as unconstitutional under the Fourteenth Amendment. In such constitutional litigation-as generally in civil litigation—the burden is on the plaintiff to establish all the elements of the cause of action to prevail. The fact that the Department of Justice-during the time in which it maintained that a "clear violation" of Section 2 also required denial of preclearance under Section 5 (see J.S. App. 32a)-assumed the burden of proving a Section 2 violation (see Bd. Br. 39) does not suggest that the statute places on the Department the burden of proving a constitutional violation, and the Department has not previously taken the position that it has that burden. While the Department previously believed that Beer placed on it the burden of proving a Section 2 violation in the Section 5 preclearance context, this Court's decisions, especially City of Pleasant Grove and City of Rome, make clear that Section 5 places the burden of proving the absence of discriminatory intent on the covered jurisdiction.

Appellee also suggests (Bd. Br. 36-37) that Congress could not have authorized the Attorney General or the preclearance court to decide constitutional questions in the Section 5 context and then also authorize a subsequent constitutional challenge to a precleared voting change. The Attorney General might, however, not interpose an objection for a variety of reasons, including the possibility that the covered jurisdiction had not submitted all the relevant evidence to her (as was the case with the Police

#### 3. The Board's Discriminatory Intent In Adopting The 1992 Plan.

Appellee argues (Bd. Br. 12-13) that the district court did not rule that the purpose prong of Section 5 is limited to retrogressive intent, but also considered whether the Board had a discriminatory (but not retrogressive) intent in adopting the 1992 plan, and found (Bd. Br. 43-50) that no such discriminatory intent was present. We have explained that the district court's opinion, although unclear, is better understood as limiting the scope of its inquiry to retrogressive intent. Gov't Opening Br. 41-42. Even if the district court did consider the question of discriminatory (but not retrogressive) intent, any findings that it may have made on that question cannot be sustained, because they were not made pursuant to the appropriate legal analysis, and are clearly erroneous in any event.

a. As we have explained (Gov't Opening Br. 42-43), the district court failed to apply the analytical framework established in Arlington Heights, 429 U.S. at 265-266, to determine whether the Board acted with a discriminatory (but not retrogressive) purpose. The court's discussion of the evidence under Arlington Heights related only to retrogressive intent, and it made only summary reference to the question of an otherwise discriminatory intent. Moreover, any finding

Jury's submission of its plan, see Gov't Opening Br. 6); the government or private parties might later discover evidence showing that the plan had been enacted with a discriminatory purpose, and pursue Section 2 or constitutional litigation on that basis. Further, although private parties are often allowed to intervene in Section 5 litigation, there is no necessity that they be present, and preclearance cases in the courts are often litigated only against the government. By allowing a subsequent constitutional challenge to be brought, even by private parties, and even after a voting change has been precleared, Section 5 balances the interest of the covered jurisdiction in implementing its voting change promptly with the interest of voters in being free of unconstitutional voting changes.

that the Board acted without a discriminatory intent is impossible to square with other findings of the district court, such as its acknowledgment that the Board was motivated by a "tenacious determination to maintain the status quo," that the Board "departed from its normal practices," and that the Board "did not welcome improvement in the position of racial minorities." J.S. App. 7a. At a minimum, therefore, a remand would be required for the district court to evaluate the evidence under the correct legal standard. 14

b. In any event, appellee's effort to defend the district court's "finding" falls well wide of the mark. Appellee makes essentially three arguments. First, it contends that the Board was required to adopt the Police Jury plan, and to reject any other plan, because of its supposed obligation to adopt a plan before December 31, 1992, without splitting any precincts. Bd. Br. 44-46. Second, it argues that the Board properly rejected the NAACP plan because that plan would have required the creation of an inordinate number of new precincts in order to develop majority-black districts. Bd. Br. 47-48. Third, it maintains that the 1992 plan did not dilute black voting strength. Bd. Br. 3-4 n.3, 6 n.5, 44. All three arguments fail.

First, the supposed need to develop a plan that would avoid any precinct splits could not have motivated the Board to adopt the Police Jury plan. The Board initially had little interest in adopting the Police Jury plan because that plan failed to respect its traditional priorities in redistricting—incumbency protection and location of schools in districts.

<sup>&</sup>lt;sup>14</sup> Appellee again suggests (Bd. Br. 14) that, when the district court discussed the 1992 plan's "dilutive impact," it must have been addressing discriminatory intent generally, and not just retrogressive intent, because it understood that this Court had used the term "dilutive impact" to refer to a discriminatory plan, rather than a retrogressive plan. That suggestion is plainly wrong, for the reason explained in our brief in opposition to appellee's motion to dismiss or affirm (at 5 n.3).

See Gov't Opening Br. 36. But the Board's cartographer Gary Joiner predicted at trial that, as a practical matter, any plan other than the Police Jury plan that would be, as he put it, "as strong as this one" (meaning the Police Jury plan) would require splitting precincts. See J.A. 271. And indeed, when Joiner met with the Board in September 1991, after the Police Jury had adopted its plan, he distributed precinct maps because, he explained, the Board would have to "work with the Police Jury to alter precinct lines." J.S. App. 174a. Nothing in the record suggests that Joiner and the Board believed that they could not ask the Police Jury to alter precincts after December 31, 1992, or that at the time they believed themselves under an obligation to redistrict before that date (since the next Board election was not until 1994). See id. at 172a, 173a.

Second, in criticizing the NAACP plan for requiring the creation of too many new precincts, appellee mistakenly

<sup>15</sup> In an effort to avoid the effect of its stipulations that the Board was traditionally concerned with incumbency protection (J.S. App. 171a, 172a), appellee suggests (Bd. Br. 48) that one member of each pair of incumbents placed in the same district under the Police Jury plan had "already" decided not to run for reelection. The parts of the record on which appellee relies, however, establish only that one member of each pair had decided not to run for reelection by the time discovery was taken in 1994—not when the plan was adopted in 1992. It is hardly surprising that one of each pair thrown together in a new district eventually decided not to challenge the other incumbent; but that only shows that the Police Jury plan in fact disserved incumbency protection, which the record as a whole demonstrates was one of the Board's traditional priorities.

<sup>&</sup>lt;sup>16</sup> Indeed, given that there was great variation among the size of the precincts under the Police Jury plan, and that some of them were quite large (one had 5440 people) while others were quite small (one had 72 people), it would have been very difficult, if not impossible, to draw any plan other than the Police Jury plan that would meet equal-apportionment requirements without breaking at least some of the precincts that formed the building blocks of that plan. See J.A. 497-499.

assumes that the relevant question is why it rejected the NAACP plan; but the pertinent question is whether it acted with discriminatory intent when it adopted the Police Jury plan, instead of (for example) exploring some other option that would not have minimized blacks' electoral opportunity. In fact, the Board could have drawn a plan containing two majority-black districts with as few as 46 total precinctsonly 3 precincts more than the number in 1990, and 10 precincts fewer than in the Police Jury plan. J.A. 236-237. Furthermore, appellee significantly exaggerates both the number and the cost of additional precincts that would have been required by the NAACP plan. Appellee asserts (Bd. Br. 4) that the NAACP plan would have split existing precincts 65 times, but it is important to understand that this does not mean that 65 new precincts would have been created, for many areas cut out of existing precincts could have been consolidated with each other or with other precincts-an option that Louisiana law permits. J.A. 380 (La. Rev. Stat. § 18:425.1 (West Supp. 1999)). 17 Such consolidations could have addressed any significant concern about increased costs. The record gives no indication, moreover, that the Board explored the costs that would be occasioned by such precinct splits, or ways to alleviate them.

Finally, in an effort to wriggle out of its concession and stipulations to the effect that the 1992 plan did dilute blacks' voting strength in the Parish (see Gov't Opening Br. 38-39), appellee argues that the record does not establish either that it was obvious that a reasonably compact majority-black dis-

<sup>&</sup>lt;sup>17</sup> For the figure of 65 precincts, appellee relies on its Exhibit 11 (J.A. 455-496), a table that was not the subject of testimony or other explanation below. On its face, the exhibit does not suggest that 65 new precincts would need to be created under the NAACP plan. The exhibit identifies 65 precinct "cuts," but 13 of those "cuts" contain no population, and many others contain very small population totals. The "cuts" therefore could readily have been remedied by consolidation with other precincts.

trict could be drawn in the Parish, or that the Parish experienced racially polarized voting. Both suggestions are wrong, even aside from the stipulations. Contrary to appellee's assertion (Bd. Br. 3-4 & n.3), Board members were aware that blacks were concentrated in certain areas, and most members also knew where those areas were. J.A. 94-100, 104-105, 109-110, 113-114, 116-124.

In addition, while Dr. Engstrom's report (J.A. 163-174) acknowledged the data limitations for doing ecological regression and extreme-case analyses for most of the elections he analyzed (almost all of the elections involved too few precincts for a reliable ecological regression analysis and no precinct that was homogeneously black), that does not suggest that his report could not validly conclude that racially polarized voting exists in the Parish. A regression analysis of the only interracial parish-wide race for local office in recent years (the 1988 primary election for the 26th Judicial District Court) revealed a high degree of racial polarization: 79.2% of black voters supported the unsuccessful black candidate, while only 28.9% of white voters did so. J.S. App. 202a-203a; J.A. 166-167. Dr. Engstrom explained (J.A. 165-167) that it is appropriate to consider the results of parish-wide elections where, as here, many districts contain too few precincts to obtain reliable estimates using ecological regression analysis of elections held in individual districts, and appellee introduced no expert testimony to the contrary, even on remand. Moreover, Dr. Engstrom was able to conclude, by examining results in homogeneously white precincts, that, in several School Board and other elections, white voters did not support black candidates. J.A. 168-170, 172-174. In fact, "folf the 14 elections since 1980 in which black candidates [ran] against white candidates for a singlemember district or for mayor, only two candidates \* \* \* won," and those successes were affected by a unique

circumstance, the presence of Barksdale Air Force Base. See J.S. App. 206a-207a; Gov't Opening Br. 4-5 n.2.

# 4. Appellee's Effort To Introduce Extra-Record Information.

Appellee continues to attempt to rely on extra-record information showing that, since the enactment of the 1992 plan, blacks have been elected to the School Board (Bd. Br. 5-6). Appellee was expressly offered the opportunity to reopen the record on remand to introduce evidence about the 1996 elections, but expressly declined to do so. J.S. App. 1a. It should not now be allowed to avoid the consequences of that decision.

As the district court concluded (J.S. App. 1a-2a & n.1), without being subjected to adversary testing and placed in context, those election results have no probative value.18 They have not been subjected to the expert analysis of racial polarization and voter turnout that was conducted regarding previous elections. See id. at 201a-210a. Without such close analysis, it is impossible to draw reliable conclusions about the 1996 and 1998 election results. As this Court has previously cautioned, the fact that some blacks have been elected does not mean that either racially polarized voting or vote dilution has suddenly disappeared. See Thornburg v. Gingles, 478 U.S. 30, 75-76 (1986). Also, "the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." Id. at 57. Success of a minority candidate may be attributable to "special circumstances, such as the absence of an opponent

<sup>&</sup>lt;sup>18</sup> The fundamental question is what the Board in 1992 expected and desired to be the consequences, for minority voting rights, of its redistricting plan. If, as the record otherwise establishes, the Board adopted that plan with a discriminatory purpose, the fact that its purpose may not have been entirely successful does not entitle it to preclearance of the plan.

[or] incumbency," *ibid.*; it may also be attributable to an effort to influence the outcome of ongoing voting-rights litigation, see *id.* at 76 n.37.

Indeed, there is reason to believe that a full analysis would lead to the conclusion that such "special circumstances" were present in the 1998 elections of all three black Board Members. Our limited review of the 1998 election results shows that one of the successful candidates. Kenneth Wiggins, was first appointed by the Board in 1997 to fill a vacant seat (which might have been an effort to influence this litigation), and then won election as an incumbent in 1998. Julian Darby and Vassie Richardson ran unopposed as incumbents in 1998. Darby was previously elected in 1996 from a district that, we have explained, has historically been somewhat less influenced by racial polarization because of the presence of Barksdale Air Force Base, 19 and his only opponent in the 1996 election was also black, a situation that is of limited utility in analysis of racially polarized voting patterns. In 1996, Richardson won election, in a district with the highest percentage of black voting-age population in the Parish, by only 35 votes, out of 1683 votes cast. Also, in three other Board elections held in 1996 and 1998, black candidates were defeated by white candidates.20 This Court

<sup>&</sup>lt;sup>19</sup> See Gov't Opening Br. 4-5 n.2. The Board's District 10 has the same lines as the district represented by Julian Darby's brother, Jerome, on the Police Jury. See J.S. App. 196a-198a.

<sup>&</sup>lt;sup>20</sup> In 1996, black candidates were defeated by white candidates in runoff elections for Districts 1 and 7 (the latter has the second-highest percentage of black voting age population in the Parish). In 1998, a black
candidate was defeated by a white candidate in District 3. Also, Jerome
Blunt, appointed by the Board in 1992 to fill a vacant seat while the Board
was considering redistricting plans and sworn in on the day that the Board
voted its intent to adopt the Police Jury plan, was shortly thereafter
defeated by a white challenger in a special election. J.S. App. 179a; see *id.*at 133a-134a n.9 (Kessler, J., dissenting) (observing that Board "appointed

should therefore decline to draw any conclusions about racially polarized voting or vote dilution from the 1996 and 1998 elections.

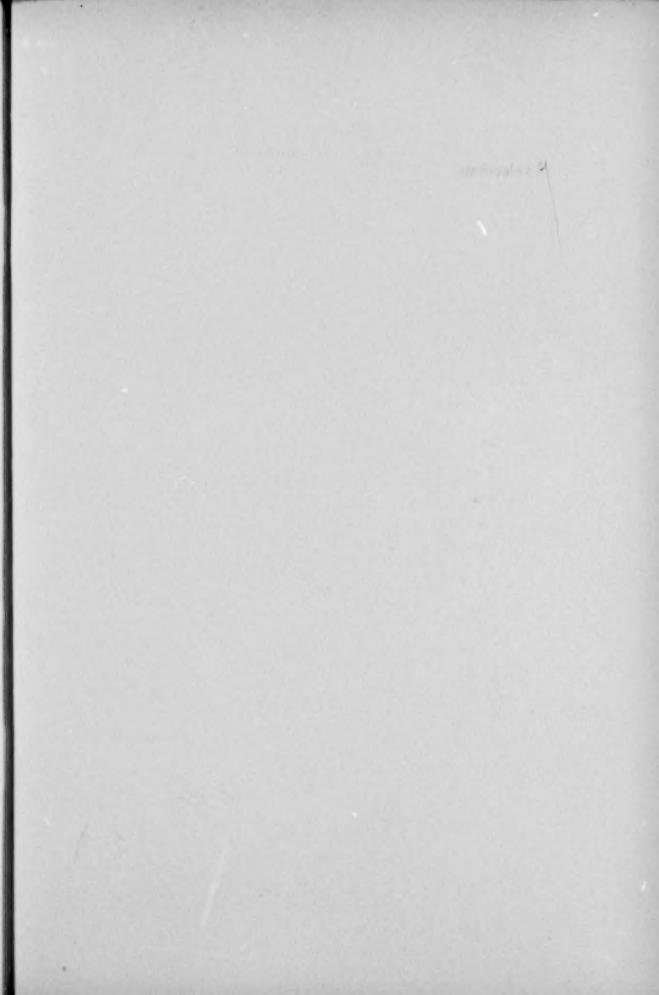
For the foregoing reasons, and for those set forth in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

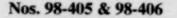
SETH P. WAXMAN Solicitor General

**APRIL 1999** 

<sup>[</sup>Blunt] to fill a seat that they knew he would be unable to hold, hoping to quell the political furor over adoption of the Police Jury plan").



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# Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, ET AL.,

Appellants,

V.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the United States District Court for the District of Columbia

## REPLY BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

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#### INTRODUCTION

This Court's remand in Bossier 11 called upon the D.C. District Court to address a legal issue under the Voting Rights Act of 1965: "[W]hether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." App. 45a. The D.C. District Court was to consider evidence that the Bossier Parish School Board ("Board" or "Appellee") violated an ongoing injunction in its federal court degregation case, App. 51a, as well as facts the court apparently had excluded concerning the plan's dilutive effect on minority voting strength, App. 50a.

For a party seeking an affirmance, the Board advocates an unusually different opinion than the court below issued. The Board now seeks a legal standard it claims was not applied on remand: That preclearance of a voting change should be denied under § 5 only if the change has a "retrogressive purpose" to abridge or deny the right to vote on account of race. The Board's argument that "purpose" prohibits only voting changes adopted with the "purpose to retrogress" twists the statutory language and this Court's cases interpreting § 5 beyond recognition. This Court consistently has barred preclearance of voting changes adopted with any purpose that is racially discriminatory and has applied the comprehensive factual inquiry of Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), in making that determination.

The Board next asks this Court for new fact findings that are contrary to many of the findings and the parties' stipulations. The reason is apparent: If any court ever applied the Arlington Heights standard to the facts actually found and stipulated, as Judge Gladys Kessler has done twice, the Board will lose this case. This Court should reject out of hand the Board's invitation to make new fact findings in the

<sup>1</sup> Reno v. Bossier Parish Sch. Bd., 520 U.S. 471 (1997), Appendix to the Jurisdictional Statement ("App.") at 29a-77a.

course of resolving the legal issue presented on this appeal. 2

### I. SECTION 5 PROHIBITS PRECLEARANCE OF VOTING CHANGES ADOPTED WITH ANY RACIALLY DISCRIMINATORY PURPOSE.

Voting changes should be denied preclearance if they have the effect of retrogression or if purpose to discriminate on the basis of race or color is identified through the analysis outlined in *Arlington Heights*.

The Statute Itself. The plain language of § 5 makes clear that the "purpose" and "effect" prongs provide different protections. Congress provided that if a covered jurisdiction can demonstrate that a voting change "does not have the purpose and will not have the effect of denving or abridging the right to vote on account of race or color," it should be granted preclearance. 42 U.S.C. § 1973c. "purpose" inquiry focuses on the contemporary motivation for the proposed voting change: "does not have the purpose." Congress' use of the present tense is consistent with the principle that analysis of discriminatory intent focuses on the state of mind of the actor at the time of the act. See, e.g., McKennon v. Nashville Banner Pub. Co., 513 U.S. 352, 359-60 (1995); Price Waterhouse v. Hopkins, 490 U.S. 228, 250, 252 (1989); id. at 260-61 (White, J., concurring), id. at 261 (O'Connor, J., concurring). The "effect" analysis is different. It calls for a prediction of the impact of the voting change in the future: "will not have the effect." For a voting change such as a districting plan, "effect" is measured by comparing the impact of the present plan to the projected impact of the proposed plan. See Beer v. United States, 425 U.S. 130 (1976).

Appellee is incorrect that *Beer* construed the words "denying or abridging the right to vote on account of race or color" to limit both the "purpose" and "effect" inquiries to retrogression. Appellee's Brief ("Bd. Br.") at 17-19. The

Appellee's "mootness" argument was addressed in the Brief of George Price, et al., Opposing Motion to Dismiss or Affirm at 2-4.

Beer Court made clear that retrogression is inherent in the word "effect":

It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the "effect" of diluting or abridging the right to vote on account of race within the meaning of § 5.

425 U.S. at 141. The Court in Beer harmonized its holding with City of Richmond v. United States, 422 U.S. 358 (1975), stating that Richmond "decided when a change with an adverse impact on previous Negro voting power met the 'effect' standard of § 5." 425 U.S. at 139 n.11. Because the voting change in Beer was ameliorative with respect to the voting power of African-Americans, it had no "effect" prohibited by § 5. See Bossier I, App. 46a ("we have adhered to the view that the only 'effect' that violates § 5 is a retrogressive one," citing Beer, 425 U.S. at 141 and City of Lockhart v. United States, 460 U.S. 125, 134 (1983)).

If "purpose" were limited to retrogressive intent, purpose would be virtually read out of § 5. It is difficult to imagine public officials having the "purpose" to retrogress in adopting a voting change which cannot be projected to result in retrogression. Yet under Appellee's submission, that would be the universe of plans subject only to the "purpose" prong of § 5. An actually retrogressive voting change would be covered by the "effect" prong, with the "purpose" prong adding no evident protection. Section 5 should be read in a way that satisfies the Court's "duty to give effect, if possible, to every clause and word of a statute." United States v. Menasche, 348 U.S. 528, 538-39 (1955). See Heckler v. Chaney, 470 U.S. 821, 829 (1985); United States v. Albertini, 472 U.S. 675, 680-82 (1985).

Limiting "purpose" to "purpose to retrogress" also fails to square with the Court's holding in Bossier I that, in conducting the purpose inquiry, "courts should look to our decision in Arlington Heights for guidance." App. 48a. While the effect of the official action is a factor encompassed in the Arlington Heights inquiry, it is not dispositive.

Arlington Heights counsels that a court weighing discriminatory intent also should examine the historical context, sequence of events leading to the decision, contemporaneous statements of public officials, and other probative evidence. 429 U.S. at 267-68. If "purpose" were limited to intent to retrogress, where a voting change is not retrogressive it is difficult to imagine why the inquiry would proceed beyond consideration of the "effect."

Limiting application of § 5 only to retrogressive voting changes also would create vexing issues when changes are considered that do not lend themselves readily to the now well-developed vote dilution or other mathematical analyses. Section 5 covers many voting changes other than reapportionment, including procedural and residency requirements, 3 and leave policies for campaigning employees. 4 The Court should decline to adopt a rule of law ill-suited to protect against discrimination in the full range of voting practices covered by § 5.

Limitation of purpose to "purpose to retrogress" would leave minority voters in jurisdictions like Bossier Parish vulnerable to some forms of intentional racial discrimination. Nothing in § 5 suggests that some category of covered voting changes enacted by covered jurisdictions should evade any meaningful § 5 review because the mathematical possibilities for retrogression are absent or obscure. The Board's proposed plan should not be exempted from full Arlington Heights scrutiny for discriminatory purpose solely because it is impossible to retrogress from zero.

B. This Court's § 5 Decisions. Appellee claims that "stare decisis principles demand fidelity to Beer and Lockhart," Bd. Br. at 23 n.17. Appellants agree. Stare

<sup>3</sup> See Hadnott v. Amos, 394 U.S. 358, 365-66 (1969); Allen v. State Bd. of Elections, 393 U.S. 544, 551 (1969) (discussing consolidated case, Whitley v. Williams); City of Rome v. United States, 446 U.S. 156, 160-61 (1980).

<sup>4</sup> Dougherty County Bd. of Educ. v. White, 439 U.S. 32, 38-43 (1978).

decisis has "special force" in cases involving statutory interpretation. See Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992, 999 n.10 (1999), citing Patterson v. McLean Credit Union, 491 U.S. 164, 172-73 (1989). See also Holder v. Hall, 512 U.S. 874, 886 (1994) (O'Connor, J., concurring in part and concurring in the judgment). The application of principles of stare decisis should not be limited here, however, to Beer and Lockhart.

1. At oral argument of Bossier I, counsel for the Board cited Richmond and City of Pleasant Grove v. United States, 479 U.S. 462 (1987), for the proposition that "purpose" under § 5 is not limited to purpose to retrogress. Transcript of Oral Argument, 1996 WL 718469, at 30-31. He was correct.

Richmond would not have resulted in a remand for further development of the facts concerning discriminatory purpose if "purpose" had been limited to intent to retrogress. Although Appellee claims that the annexation at issue was "retrogressive," Bd. Br. at 30, the Richmond Court ruled that the annexation did not have a prohibited "effect" because the post-annexation election system fairly recognized minorities' political potential in the expanded jurisdiction. The Board claims that "[t]he Court . . . remanded the case to insure that the motivation behind the annexation was not to cause such obvious retrogression in black voting strength, but was done for 'verifiable, legitimate reasons." Bd. Br. at 31, quoting Richmond, 422 U.S. at 375 (emphasis in original). The word "retrogression" is nowhere to be found on the cited page nor anywhere in Richmond's remand directive.

The purpose inquiry in *Richmond* was not preempted by a finding that the voting change lacked a retrogressive effect:

An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color. . . An annexation

proved to be of this kind and not proved to have a justifiable basis is forbidden by § 5, whatever its actual effect may have been or may be.

422 U.S. at 378-79.

In Pleasant Grove, decided after Beer, the Court held that proposed annexations of land that was vacant or inhabited by a few whites did not have a present effect on black voters in the city, since there were no black voters in the city. 479 U.S. at 470-71. Despite that, the Court held that the city had failed to carry its burden of demonstrating a lack of discriminatory purpose within the meaning of § 5. Id. at 472. The Court made clear that "purpose" is not limited to present circumstances and can contemplate future effects, see Bd. Br. at 28-29, but the analysis went further. The Court found the city's argument "also incorrect insofar as it implies that a covered jurisdiction can short-circuit a purpose inquiry under § 5 by arguing that the intended result was not impermissible under an objective effects inquiry. . . . We rejected such reasoning in City of Richmond. . . . " 479 U.S. at 471 n.11. Pleasant Grove would have resulted in a reversal and preclearance of the annexations if the only purpose comprehended by § 5 is purpose to retrogress, since no retrogression could have been involved.

2. The Appellee dismisses Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983), arguing that "the primary flaw in Busbee was that the submitting jurisdiction had 'split a cohesive black community in Districts 4 and 5," Bd. Br. at 30 n.23, quoting 549 F. Supp. at 498-99. The D.C. District Court in Busbee found that the overall "plan does not have a discriminatory effect," since the one majority black district in the previous districting plan remained in the new plan, and gained a few percentage points in black population. 549 F. Supp. at 516, citing Beer, 425 U.S. at 141. The splitting of the cohesive black communities in Busbee was highly relevant to the finding of discriminatory purpose. Id. at 517. This Court's summary affirmance can mean something other than agreement with the finding of discriminatory purpose, not limited to retrogressive intent,

only through a chain of logic something like this: This Court rejected the D.C. District Court's conclusion of no retrogressive effect; it adopted a definition of retrogression, at odds with *Beer*, that encompassed splitting of cohesive black communities even where one black majority district existed in the old and in the proposed plans; and it silently affirmed on that basis. It is inconceivable that the Court did this rather than accept the thorough and careful findings that the districting plan was infected with racial *animus*.

3. Beer itself took care to explain that "an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141. Appellee would have those words mean only that some separate constitutional case can be brought to attack a discriminatory but ameliorative voting change. Bd. Br. at 33. The Court, however, addressed whether an ameliorative apportionment can "violate § 5," because it discriminates. Accord Richmond, 422 U.S. at 378-79 (a discriminatory voting change "has no legitimacy at all under our Constitution or under the statute" and "is forbidden by § 5, whatever its actual effect may have been or may be") (emphasis added)).

Section IV of Appellee's Brief addresses musings "raised by dicta in Beer," Bd. Br. at 33, not by the questions presented in the Jurisdictional Statements, decided by the court below, or argued by the Appellee during the long course of these proceedings. Appellee embarks on this excursion because it needs to find some meaning for the language in Beer other than the apparent one: That § 5 prohibits preclearance of voting changes adopted with a discriminatory intent that is not retrogressive. Section IV of Appellee's Brief suggests the morass of legal issues that awaits if the Court restricts "purpose" to "purpose to retrogress."

C. The Principle Prohibiting Discriminatory Governmental Action. Appellee makes much of the statement in *Beer* that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial

minorities with respect to their effective exercise of the electoral franchise." 425 U.S. at 141, quoted in Bd. Br. at 17 n.13, 20. This statement stands alongside powerful assertions that "the basic purpose of Congress in enacting the Voting Rights Act was 'to rid the country of racial discrimination in voting," and that "[s]ection 5 was intended to play an important role in achieving that goal." Beer, 425 U.S. at 140, quoting South Carolina v. Katzenbach, 383 U.S. 301, 315 (1966). Accord Bossier I, App. 33a ("[t]he Voting Rights Act of 1965. . . was enacted by Congress in 1964 to 'attac[k] the blight of voting discrimination' across the Nation," quoting S. Rep. No. 97-417, at 4 (1982). Appellee suggests that § 5 reaches only voting changes adopted with the "intent to increase discrimination against minorities," Bd. Br. at 18-19, as if there is some acceptable level of racial discrimination in official acts regarding voting. That is contrary to the purpose and reach of § 5.

In the 1970 Voting Rights Act, Congress banned the use of any "test or device" as a prerequisite for voting or registration, 42 U.S.C. § 1973aa, thus stamping out some of the most flagrant means by which African-Americans had been denied the opportunity to vote at all. By requiring in § 5 that jurisdictions that had engaged in the most widespread voting discrimination preclear changes in voting practices and procedures, Congress did "freeze" voting practices. There is no reason to think, however, that Congress accepted that status quo as non-discriminatory as long as things got no worse for African-American voters.

It is unsurprising that Congress would bar preclearance of voting changes that are motivated by discriminatory animus, even voting changes that otherwise are valid. Anti-discrimination statutes -- and the constitutional amendments they enforce -- routinely prohibit conduct that would be legal and appropriate if motivated by legitimate goals. See Yick Wo v. Hopkins, 118 U.S. 356 (1886) (striking down San Francisco laundry permit ordinance deliberately enforced to prevent Chinese from operating laundries); Gomillion v. Lightfoot, 364 U.S. 339, 341 (1960) (reinstating claim that

Alabama legislature's change in boundaries of City of Tuskegee from a square to a "strangely irregular twenty-eight-sided figure" was intended to deny Equal Protection to excluded African-Americans). A municipality has a legitimate interest in regulating laundries to avoid the danger of fire. States have authority to draw municipal boundaries. But where such acts are designed to exclude persons on the basis of race or nationality, even where the pattern of exclusion is stark "it was the presumed racial purpose of state action, not its stark manifestation, that was the constitutional violation." Miller v. Johnson, 515 U.S. 900, 913 (1995). Accord Rogers v. Lodge, 458 U.S. 613, 617 (1982) ("the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose," quoting Washington v. Davis, 426 U.S. 229, 240 (1976)).

Federal courts generally refrain from reviewing the merits of legislative and administrative decisions because they are owed deference in the effort to balance competing considerations. Arlington Heights, 429 U.S. at 265. But "[w]hen there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified." Id. at 265-66. As authority for the proposition that even a single governmental act, lacking a pattern of official discrimination, is not immune from scrutiny for discriminatory intent, Justice Powell cited the page in Richmond that explained the reason for the remand to consider discriminatory purpose under § 5. Id. at 266 n.14, citing 422 U.S. at 378. Because "[a]cts generally lawful may become unlawful when done to accomplish an unlawful end," Western Union Tel. Co. v. Foster, 247 U.S. 105, 114 (1918), quoted in Richmond, 422 U.S. at 379, preclearance should be denied to any voting change adopted with a purpose to discriminate, as identified by the Arlington Heights analysis.

# II. WHEN THE CORRECT LEGAL STANDARD IS APPLIED TO THE STIPULATIONS AND THE FINDINGS OF FACT, PRECLEARANCE SHOULD BE DENIED.

The D.C. District Court held that "[t]he question we will answer. . . is whether the record disproves Bossier Parish's retrogressive intent in adopting the Jury plan." App. 4a (emphasis added). Judge Kessler, in dissent, argued that her "colleagues have limited their § 5 purpose inquiry to a search for intent to retrogress," App. 13a, which the majority did not deny.

What Appellee characterizes as a "fact finding" by the D.C. District Court that the Board's redistricting plan was not motivated by discriminatory intent is a confused recitation of legal standards and questions presented in the opinion below, that is further confounded in Appellee's presentation. Contrary to Appellee's submission, the D.C. District Court did not make a clear finding on the record before it that there was no intent to discriminate in any way, including any intent to retrogress. Bd. Br. at 12. The D.C. District Court made two general statements about the facts concerning intent and whether they demonstrate only a purpose to retrogress or a broader discriminatory purpose:

First, it said that "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." App. 3a. This statement is inscrutable. It is not a finding one way or the other on whether there is evidence of intent beyond intent to retrogress. It seems to assume that all of the record evidence concerning the Board's purpose goes to the issue of intent to retrogress, which makes no sense with respect to a voting plan that is not retrogressive.

Second, the court stated that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose,' but those imagined facts are not present here." App. 3a-4a, quoting Bossier I, App. 46a. The court did not describe what facts it could "imagine." A "finding" that the facts in this case do not measure up to a

standard set by unrevealed "imagined" facts cannot be called a fact finding to which this Court owes deference.

The case now is back before this Court for resolution of an issue of law concerning the meaning of "purpose" in § 5. The correct legal principle can be applied by this Court to the record because it is largely stipulated, App. 145a-232a, and was not reopened on the last remand. Application of the proper legal principle to the stipulations and fact findings warrants reversal and rejection of the Board's districting plan. Appellee's efforts to overreach that record are inappropriate here and inaccurate, as demonstrated by the examples that follow.

A. The NAACP Plan and Precinct-Splitting. The Board attempts to sow confusion when it asserts that it was faced with a choice between the NAACP plan and the Police Jury plan in late 1992 and had no choice but to adopt the Jury plan because the NAACP plan split precincts and thus was a facial violation of state law. Bd. Br. at 2-4, 20-21, 44-48. These assertions rest on a fundamental misunderstanding of the NAACP plan.

The NAACP plan was never offered as a "take it or leave it" proposal. Mr. Price presented it to prompt examination of whether majority-black districts could be part of the overall districting plan. Indeed, Mr. Price originally provided a drawing of only two election districts, to illustrate the point:

The NAACP did not draw a complete plan because they were most interested in demonstrating ways to more fairly reflect black voting strength and did not want to raise issues as to the other districts: the School Board was free to draw them in any way they chose.

App. 177a, ¶ 99. Mr. Price was rebuffed not because the two districts would require precincts to be split, but because a Board official told him "he would need to come up with a plan that contained all twelve districts." *Id.* The Board never undertook what Mr. Price requested: Incorporation in the

Board's own planning of an effort to unify black communities into election districts.

The configuration of precincts was a "barrier" to the drawing of majority African-American districts only because the Board allowed it to be. "[T]he parties have stipulated that school boards redistricting around the time... were 'free to request precinct changes from the Police Jury necessary to accomplish their districting plans." App. 84a, quoting Stipulation ¶ 23 (App. 151a). The Police Jury has power, subject to provisions of Louisiana law, "to change the configuration, boundaries, or designation of an election precinct." La. R.S. 18:532.1(A) (J.A. 385).

The D.C. District Court found that "[w]hen the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts. It hired the Police Jury's cartographer with the expectation that he would spend a substantial amount of time on the project." App. 108a. Indeed, the Board's cartographer gave precinct maps to the Board members, telling them that "they would have to work with the Police Jury to alter the precinct lines." App. 174a, ¶ 89. When the NAACP plan was presented and "summarily dismissed" by the Parish District Attorney and the Board's cartographer for the stated reas a that it "crossed existing precinct lines, and therefore via and state law," they "were aware of the option of obtaining precinct line changes from the police jury." App. 179a, ¶ 102.

The D.C. District Court was correct that the Board could adopt a plan with precincts different from the Police Jury plan and work out an acceptable accommodation under Louisiana law.<sup>6</sup> First, state law provided a window from April 1, 1991

Appellees are incorrect that the NAACP plan "was drawn by William Cooper for the exclusive purpose of 'creat[ing] two majority black districts," Bd. Br. at 3 (quoting Mr. Cooper's testimony about a different plan at J.A. 371), since Mr. Cooper did not draw the NAACP plan at all. See App. 83a; 177a, ¶ 98.

<sup>6</sup> The Board claims that "Appellants' contention that such precinct splits are 'common' is . . . misleading." Bd. Br. at 46.

to May 15, 1991 within which the Police Jury could divide precincts in order to meet applicable state and federal guidelines in the creation of its reapportionment plan. La. R.S. 18:532.1.H.(2) (J.A. 389). The Police Jury developed its plan, which created new precincts, in this window. See App. 162a-165a, ¶ 58-63.7 Had the Board begun its redistricting earlier, it could have worked with the Police Jury to develop precincts during the 1991 window that would accommodate a different plan. Second, the Board is incorrect that it was legally impossible for the Board, after missing the 1991 precinct change window, to adopt a plan that would require Police Jury approval of precinct changes because the Board had to act before December 31, 1992 but the Police Jury next could consolidate precincts only after January 1, 1993. Bd. Br. at 3. The Board could have adopted a plan before December 31, 1992, as it did, and asked the Police Jury actually to accomplish the precinct changes necessary after January 1, 1993. There was no School Board election until 1994, so the Board and Police Jury had ample time to work together.

The D.C. District Court cited witness testimony that precinct splits were "quite common," App. 107a, and that the witness had "routinely drawn redistricting plans that split precincts," App. 84a. The parties stipulated that two other parish school boards accomplished their recent redistricting by requesting precinct changes from their police juries; the Board's cartographer testified that the practice "is not unheard of, it has been done in other places." App. 151a, ¶23. Appellee offers no citation, or record support, for the proposition that the Board and Police Jury "had never split precinct lines." Bd. Br. at 3 n.2.

If the Board is trying to imply that the Police Jury could not split existing precincts even to create its own redistricting plan, Bd. Br. at 3 n.2, that is incorrect, since "20 new precincts were created when the 1991 Police Jury plan was drawn," App. 167a, ¶ 70. The parties stipulated that "[p]recinct realignments are a normal practice within Bossier Parish, occurring every three or four years. Bossier Parish has made a number of such precinct realignments within the last ten years." App. 155a, ¶ 38. At the time of trial, the Board's cartographer was working with the Police Jury on precinct consolidations. J.A. 273-275 (Joiner).

Finally, it is not the position of appellants that it was a violation of any law for the Board not to adopt the NAACP plan. The Attorney General's letter denying preclearance explained that "while the School Board was not required to 'adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." App. 86a, quoting App. 235a. The NAACP plan provided the context in which the Board addressed the question of drawing majority-black districts. When confronted with that option, the Board ran to a plan it previously had rejected and "never approached the Police Jury to request precinct changes." App. 84a. The Board never asked the cartographer "to approach the Police Jury to request that the precinct lines be redrawn to enable the creation of majority-black School Board districts." App. 188a, ¶ 128.

B. Traditional Districting Principles. Appellee argues that the NAACP plan subordinates traditional redistricting principles "because it is not compact," Bd. Br. at 3 (footnote omitted), and disavows a stipulation that a reasonably compact majority-black district could be drawn in Bossier City, App. 154a, ¶ 36.8 This new argument ignores the parties' further stipulation that the majority-black district in Bossier City in the Cooper plans "is an acceptable

Appellee does not attempt to demonstrate that this case presents the "exceptional circumstances" or "manifest injustice" which must be shown to overturn stipulations, particularly after judgment. See, e.g., Feazell v. Tropicana Prods., Inc., 819 F.2d 1036, 1040 (11th Cir. 1987) ("[m]atters stipulated to in a pretrial order are binding on the parties unless modified and normally cannot be objected to on appeal"); Cooperative Servs., Inc. v. Dep't of Housing and Urban Dev., 562 F.2d 1292, 1294 (D.C. Cir. 1977); United States v. 3,788.16 Acres of Land, 439 F.2d 291, 294-95 (8th Cir. 1971). Appellee's failure to seek relief in the trial court defeats its effort to escape the stipulations here. See Jauregui v. City of Glendale, 852 F.2d 1128, 1134 (9th Cir. 1988); Mull v. Ford Motor Co., 368 F.2d 713, 716 (2d Cir. 1966); Osborne v. United States, 351 F.2d 111, 120 (8th Cir. 1965).

configuration from the standpoint of district shape." App. 194a, ¶ 150.9

Moreover, there is no district court finding in Knight v. McKeithen that it is impossible to draw a reasonably compact majority-black election district in Bossier City, as Appellee contends. Bd. Br. at 4 n.3. To the contrary, the court in that separate litigation stated from the bench that it was "not comfortable" with the first Cooper plan, but had "not had sufficient time or sufficient evidence presented to convince [it] that some other plan, which complies with Section 2 of the Voting Rights Act, cannot be drawn that will recognize compactness..." J.A. 51.

The Board fails to disclose that, under the statistical test for compactness used by the Board's own cartographer, at least four of the 12 election districts in the Jury plan fail. App. 191a, ¶ 139. 10 The alternative configurations drawn by Mr. Cooper for a second minority district in the relatively sparsely populated northern part of Bossier Parish are "virtually identical in length to the School Board's proposed district configuration and cover[] 40 percent less land area." App. 194a, ¶ 149.

Appellee's efforts now to have this Court hold that incumbency was not a problem in the Police Jury plan, Bd. Br. at 48, fly in the face of the D.C. District Court's finding that "[t]he Police Jury plan wreaked havoc with the incumbencies of four of the School Board members. . . ." App. 106a. Two pairs of Board incumbents were pitted

The first Cooper plan was a proposed interim election plan that the Price Appellants provided to the court in *Knight* v. *McKeithen*, No. 94-848-A2 (M.D. La.), as an option when the Board lacked a precleared election plan for the scheduled 1994 elections. App. 193a, ¶ 147. The Board proposed that the Police Jury plan be ordered instead; the court declined to order either. J.A. 51-52.

<sup>10</sup> The Board also offers no response to the uncontested fact that the Police Jury plan exceeds the one-person-one-vote standard in Louisiana law. See App. 181a-182a, ¶ 109.

against each other and, unsurprisingly, in each pair one member had decided not to run by the time of the testimony below. The citations in Appellee's Brief do not support any inference that the Police Jury plan met the Board's incumbency concerns.

The Board derides "appellants' newly-minted principle" that school board members sought location of schools in their election districts. Bd. Br. at 48. In fact, the parties stipulated the "School Board members . . . are typically concerned with having a public school or schools in each district." App. 151a, ¶ 24.

It is characteristic of the Board's treatment of the facts that it notes the support of the one black Police Juror -- Jerome Darby -- for the Jury plan, Bd. Br. at 44, as if to endorse its fairness to the black community. Mr. Darby testified below that he "was deliberately misled" with regard to the possibility of drawing majority-minority election districts in the parish, and that "[i]f [he] had known then what [he] know[s] now, [he] would have voted against the Police Jury plan." J.A. 135-36. The parties have stipulated that this testimony is true. App. 165a, ¶ 64.

C. Election Results. The Board seeks "judicial notice" of two sets of Board election results under the Police Jury plan. The "1994 election" results 11 were available when the Court remanded this case in 1997, but the Board rejected the invitation to supplement the record. App. 1a, n.1. The D. C. District Court properly refused to take notice of the election results when the Board raised them in a reply brief, concluding that if it were to consider the election results, it "would need more information about them." Id. Where a district court refuses to take judicial notice of an adjudicative fact, the appellate court should reject that decision only upon a showing of abuse of discretion. See O'Bannon v. Union Pacific R.R. Co., No. 98-2279, 1999 WL 47730 (8th Cir. Jan. 2, 1999); Waid v. Merrill Area Public Schools, 130 F.3d

What the board calls "1994" elections, Bd. Br. at 5, apparently are those of March and April 1996.

1268, 1272 (7th Cir. 1997); United States v. Mulderig, 120 F.3d 534, 542 (5th Cir. 1997); York v. American Tel. & Tel. Co., 95 F.3d 948, 958 (10th Cir. 1996).

The court below did not abuse its discretion, since the election results had not been subjected to the expert analysis of racial polarization and voter turnout that the parties conducted regarding previous elections. There also was no exploration of special circumstances that bear on their probative value, including the impact of the pending litigation. See Thornburg v. Gingles, 478 U.S. 30, 76 (1986) (district court properly considered whether "pendency of this very litigation [might have] worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting"); Solomon v. Liberty County Comm'rs, 166 F.3d 1135, 1143-46 (11th Cir. 1999) (district court's reliance on electoral success of minority candidate during pendency of lawsuit to support finding of no vote dilution was clear error); see also Clark v. Calhoun County, 21 F.3d 92, 96 (5th Cir. 1994); City of Carrollton Branch of NAACP v. Stallings, 829 F.2d 1547, 1560 (11th Cir. 1987). The 1998 elections likewise are limited in probative value because they occurred while appellants were seeking this Court's review of the D.C. District Court decision.

On the first appeal to this Court, the Board tried to introduce the 1996 election results through a motion to supplement the record, which this Court denied. Reno v. Bossier Parish Sch. Bd., 517 U.S. 1154 (1996). On this appeal, the Board does not attempt a motion but simply asserts the election results as if they were part of the record and considered below (which they were not) and as if election of African-Americans proves that the African-American community has elected its candidates of choice (which it does not). See Gingles, 478 U.S. at 76 n.27. The Board's strategic bypass of the trial court, where a factual inquiry could be fully and fairly accomplished, should not be rewarded with judicial notice of the one-sided presentation in its brief.

D. Resistance to Desegregation. The D.C. District Court found that the historical background of the adoption of the Police Jury plan "provides powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts." App. 7a. The intent proved by the Board's resistance to school desegregation "is a tenacious determination to maintain the status quo." Id. 12

The Board now seeks to overturn what it calls "appellants' suggestion" that the Board violated the desegregation decree when it disbanded a bi-racial committee. Bd. Br. at 49. In fact, it is a finding of fact that it asks this Court to reject:

Part of [the] history is the school board's resistance to court-ordered desegregation, and particularly its failure to comply with the order of the United States District Court in Lemon v. Bossier Parish School Board, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir. 1967), cert. denied, 388 U.S. 911 (1967), that it maintain a bi-racial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Stip. ¶ 111.

App. 7a.

The Board also concludes that "[t]here is no evidence that the school's alleged racial imbalance is attributable to the Board's conduct." Bd. Br. at 49. The Board provides no basis to infer that the increasing number of majority-black schools, to which the parties have stipulated (App. 218a, ¶ 241), is due to "demographic factors over which [the Board] has no control. See Freeman v. Pitts, 503 U.S. 467, 494 (1992)." Bd. Br. at 49. Freeman teaches that a school

The Board questions whether "the status quo" refers to the Police Jury plan or the 1980's Board plan. Bd. Br. at 16 n.12. In the context of the history of resistance to desegregation, the status quo is the ongoing Board reluctance to address the interests of the African-American community.

district seeking unitary status has the burden of demonstrating, among other things, "whether the vestiges of past discrimination hasvel been eliminated to the extent practicable." 503 U.S. at 492, quoting Board of Educ. of Oklahoma City v. Dowell, 498 U.S. 237, 249-50 (1991). The Board sought unitary status in 1979 and was denied. App. 217a, ¶ 239. It accordingly has the ongoing affirmative obligation to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Green v. School Bd. of New Kent County, 391 U.S. 430, 437-38 (1968). "[A] critical beginning point" in the analysis when the board next moves for unitary status will be "the degree of racial imbalance in the school district. . . . " Missouri v. Jenkins, 515 U.S. 70, 87 (1995), quoting Freeman, 503 U.S. at 474. How the Board can show that racially identifiable black schools result from demographic patterns while it claims that there are inadequate concentrations of African-American voters to form compact majority-black election districts is an interesting conundrum, but one that will be faced only when the Board again seeks unitary status and is put to its proof.

### CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted,

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